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NOMINATION OF EDWIN MEESE III

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

THE PRESIDENT'S NOMINATION OF EDWIN MEESE III TO BE ATTORNEY GENERAL OF THE UNITED STATES

MARCH 1, 2, 5, AND 6, 1984

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NOMINATION OF EDWIN MEESE III

THURSDAY, MARCH 1, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Present: Senators Thurmond, Biden, Hatch, Kennedy, Metzenbaum, Simpson, DeConcini, Heflin, Baucus, Denton, Grassley, Specter, Mathias, Laxalt, and Warner.

Staff present: Duke Short, chief investigator; Joseph Kopka and Allan J. Spence, investigators; and Ruth E. Lucas, investigative clerk.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

This morning, we begin confirmation hearings on the President's nomination of Edwin Meese III, to be Attorney General of the United States. I want first to welcome Mr. Meese and his lovely wife, Ursula, and their daughter here today, and to extend my congratulations to him on this nomination.

As my colleagues are well aware, Mr. Meese has a long and active record of public service. He served with distinction as a law professor at the University of San Diego and later as deputy district attorney in California, where he established a solid reputation as a tough and fair prosecutor.

In addition, he was also the State of California's legal affairs secretary during the administration of then Gov. Ronald Reagan. Since coming to Washington in 1981, Mr. Meese has worked closely with me in his capacity as counsel and principal adviser to President Reagan. I know him as a highly principled man, committed to the fair administration of justice, and as an individual with a unique understanding of the problems confronting our courts and law enforcement system.

The position for which Mr. Meese has been nominated is one of the most important in the Federal Government. The Attorney General is the chief law officer of the Government, and is also responsible for giving advice and opinions to the President on a wide range of issues.

The post represents our Nation's trust and confidence in the rule of law, and that is why this committee must be highly confident of an individual's qualifications to serve in this important position.

It has always been my policy as the chairman of the committee to see that all relevant information about a nomination, especially one as important as this, be fully and fairly evaluated. To that end, I want to assure my colleagues that we will attempt to give everyone wishing to be heard on this issue an opportunity to either speak or have their comments noted in the record.

However, I want to reiterate that the purpose and scope of these proceedings is to fairly determine the qualifications of Mr. Meese to be Attorney General. I am confident that my colleagues share my concern that these hearings closely follow those criteria and not become a far-ranging, partisan debate.

It is my intention to complete these hearings tomorrow, March 2, if possible, and then schedule a vote in committee next week. We owe it to the Senate and indeed the Nation as a whole to act as expeditiously as possible in processing this nomination. However, full opportunity will be allowed to determine the nominee's qualifications.

Before calling on Senator Wilson for his presentation of President Reagan's nominee, each member of the committee will be recognized for brief opening remarks. The Chair now recognizes the distinguished ranking minority member of this committee, Senator Biden of Delaware.

OPENING STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.

Senator BIDEN. Thank you very much, Mr. Chairman.

Welcome, Mr. Meese. As the Chairman has indicated, we in this committee take this function very seriously. Quite frankly, there is no other function that we perform, save the Supreme Court and appointments to the Supreme Court, that is as important as the process which we are about to undergo today.

And the chairman indicated that we are interested in your qualifications. One of the problems is the Constitution, when it talks about advise and consent, does not clearly spell out what basis upon which each Senator should make that judgment. And your qualifications are really what is at issue here today and what we will be asking you about.

The Attorney General and the Supreme Court, unlike any other appointment that a President makes, are different; they are different, obviously, than any other Cabinet appointment. And in the case of the Supreme Court, the distinction is obvious, but in the case of the Attorney General, it is less so, for the Attorney General has a clear and independent, I would argue, fiduciary responsibility to the American people that exceeds his responsibility to the President of the United States of America.

You are here today for the purpose of seeking confirmation to become the people's lawyer more than you are to be the President's lawyer. Consequently, the question relating to your confirmation is not merely whether or not you possess the intellectual capabilities and the legal skills to perform the task of Attorney General, and not merely whether you are a man of good character and free of conflict of interest that might compromise your ability to faithfully and responsibly and objectively perform your duties as Attorney General, but whether you are willing to vigorously enforce all the laws and the Constitution even though you might have philosophical disagreement with them, and whether you possess the standing and temperament that will permit the vast majority—and I emphasize the vast majority—of the American people to believe that you can and will protect and enforce their individual rights.

It will come as no surprise to you, based upon the fact that you have had a significant number of people here to wish you well on your first day, that you are one of the more controversial appointments to the office of Attorney General in the 11 years that I have been here.

You may not agree, but I would suggest you are by far and away the most controversial Attorney General I have ever had the honor or privilege of voting on. And it is my intention as the Democratic leader of this committee to see to it that these hearings are fair, but very thorough.

We intend to make a full and complete record of all the legitimate aspects of your appointment, and I truly believe that only through this thorough process can an appointment as controversial as yours put you in a position, assuming you are confirmed, to perform the task properly as Attorney General with the full confidence not only of the President of the United States, but the American people.

To further this end, I will be asking you a number of questions about what have been characterized as insensitive statements on your part, your relationship to the President's past political campaign, and your possible relationship to his upcoming political campaign, in addition to the questions on civil rights and civil liberties and many other subjects that fall within the purview of the Attorney General.

And if I find that your view on these vital subjects diverges significantly from clearly stated congressional intent or constitutional interpretation, or if you are unable to make a clear distinction for me between your role as counselor to the President and that of Attorney General, or if I have found that your role in the 1980 campaign involved you in any illegal or unethical activities that might impinge upon your judgment for the current job, I think I would feel compelled to vote against you.

I need not remind this committee that in our recent memory, we have had two Attorneys General leave office under a cloud and later convicted of criminal acts. These two Attorneys General obviously did not live by the standard articulated by Edward Bates, who served as President Lincoln's Attorney General, who said, and I quote, "The office I hold is not properly political, but strictly legal, and it is my duty, above all other Ministers of State, to uphold the law and resist all encroachments from whatever quarter of mere will and power."

If, at the end of these hearings, you have demonstrated a willingness and capacity to live by that standard, you will be confirmed with my support. If, on the other hand, at the end of the process, there is serious question about your objectivity or fairness or your temperament to conduct yourself in this job, I will not join in that effort because to do so deliberately ignores the lessons of the recent past.

Mr. Chairman, I thank you for your time, and I have an open mind as we begin this process. Thank you, Mr. Chairman.

The CHAIRMAN. The senior Senator from Maryland, Senator Mathias.

OPENING STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.

Senator MATHIAS. Thank you, Mr. Chairman. I join with the other members of the committee in congratulating Mr. Meese on having been nominated by the President of the United States for this historic post, this great office, which is of such significance to all the American people.

Yesterday evening, as I was leaving the office and was sorting through the cluttered papers on my desk, trying to bring some memorandums home to prepare for this hearing, I reflected on the fact that if Mr. Meese is confirmed, he will be the 12th Attorney General of the United States with whom I have served and worked, and that this is the 9th confirmation hearing in which I have participated.

I think if I have learned anything out of that experience, it is that the important issue to be determined at a confirmation hearing for Attorney General is exactly what the lawyer-client relationship is going to be; to nail down at the outset who the client is.

Mr. Meese comes before us with the enthusiastic recommendation of the President of the United States, and that is a mighty asset. But it also raises a question that I know Mr. Meese is going to want to address in this hearing.

I think one of the important elements of this hearing, as it is in every hearing for confirmation of an Attorney General, will be to determine whether or not the nominee will be independent from the White House. Will he be independent enough to allow him to discharge in a proper manner the duties of Attorney General? The Attorney General is the first lawyer in this land.

The first client of the first lawyer is the American people. The Committee will want to be satisfied that the nominee is ready, willing, and able to serve that first client without any reservation whatever.

I look forward to these hearings and I look forward to serving with Mr. Meese as Attorney General of the United States.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Massachusetts, Senator Kennedy.

OPENING STATEMENT OF SENATOR EDWARD M. KENNEDY

Senator KENNEDY. Thank you very much, Mr. Chairman.

Welcome, Mr. Meese, to these hearings. The Office of the Attorney General is a symbol for all Americans and I believe that the fundamental question before us in these hearings is whether, in fact, Mr. Meese will be an Attorney General for all Americans.

The record of this administration over the past 3 years on issues affecting civil rights, women and the poor is a disgrace. And by all accounts, Mr. Meese has been an architect of most, if not all, of the administration's policies in these areas, and his active involvement raises serious doubts about the genuineness of the commitment to fairness and evenhanded application of the rule of law.

The Justice Department has exploited every opportunity to roll back decades of progress on civil rights. The administration prides itself on cutting spending, yet has proposed the most unconscionable Federal spending of all—tax subsidies for segregated schools.

The administration has consistently impeded efforts by black parents to participate in school desegregation lawsuits, and it has attacked voluntary local efforts to end school segregation, despite clear congressional and judicial endorsements of voluntary action in this area.

The administration has brazenly politicized the Civil Rights Commission, the conscience of the Nation on civil rights for a quarter century. This unrelenting assault on the Commission's independence is one of the most shameful examples of the administration's contempt for civil rights.

Equally distressing is the administration's disregard for those who exist in poverty. According to the Census Bureau, 34 million Americans lived below the poverty level in 1982, an increase of 8 million since 1979.

And in the face of this appalling increase, the administration has called on Congress every year to abolish legal services for the poor. Only last December, Mr. Meese himself dismissed the overwhelming evidence of rising hunger in America as anecdotal, claiming that people go to the soup kitchens because the food is free, and that it is easier than paying for it.

This administration says that it supports the "E" and the "R," but not the "A" of the Equal Rights Amendment. The "E" and the "R" are also missing from its policies. Economic justice is not a part of the Reagan economic plan.

Working women earn one-third less than working men. If the female heads of household were paid wages comparable to men, half the poor families in America would not be poor at all.

Yet, we have a Justice Department now that sides in court with those determined to perpetuate discrimination based on sex, whether the issue is equal pay for work of comparable worth or sex discrimination in the Nation's schools and colleges.

So I look forward to Mr. Meese's responses, but I also approach these hearings with concern about the degree of responsibility for such policies, which I have outlined here briefly now, and with the serious concern about the qualifications to be the Attorney General and really represent truly all Americans.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Nevada, Mr. Laxalt.

OPENING STATEMENT OF SENATOR PAUL LAXALT

Senator LAXALT. I thank the chairman.

Mr. Chairman, members of the committee, it is a particular pleasure for me to welcome my good friend, Ed Meese, to the hearings. I look forward to joining my colleagues in performing our very solemn constitutional duty to inquire of the qualifications of this nominee to succeed William French Smith as the chief law enforcement officer of the United States.

I have been a member of the U.S. Senate now for some 10 years. During that period, I have, along with the members of this committee, passed on nominations of many men and women appointed to high Government positions. But I must say that never before have I been more directly aware of the professional and personal qualifications of a nominee than I am of those held by Mr. Meese. As a consequence, I support him wholeheartedly and without reservation.

Ed Meese has spent the last 25 years of his life in public service. Like some of us, he has done so at great personal and financial sacrifice. Some would say that the process of Senate confirmation has become a modern day inquisition that discourages honorable men and women from entering public service, thereby disserving the American people by eliminating prospective nominees.

Seven years ago—and I remember it well, and I know many of my colleagues will—another nomineee for Attorney General was also willing to put his reputation for integrity and character on the line to serve this country. I am, of course, speaking of Judge Griffin Bell, a man I hold in the highest regard.

Like Ed Meese, he was also a close personal adviser to the President who nominated him. He also was challenged as to whether his loyalty to the President would affect his ability to wield the Justice Department's awesome power without political favor or bias.

Judge Bell acquitted himself very well during 6 days of very grueling hearings. I believe history will show him to be one of our finest Attorneys General. He established his independence of the President and of the Congress as well during the time that he served.

Judge Bell has since written that, "If you bow to the Congress, you can do just as much damage as if you are not independent of the White House." I know Ed Meese to be a man who can meet this very high standard.

Mr. Chairman, in closing I would like to make a request before the committee begins to take testimony, and that is this: In the interest of fairness, I ask that the nominee be sworn and that any other witness who wishes to speak to this nomination be required to testify under oath as well.

I thank the chairman.

The **Chairman**. In response to the distinguished Senator from Nevada on that point, the Chair plans to swear Mr. Meese and all other witnesses who come to testify.

Senator **Laxalt**. I thank the chairman.

The **Chairman**. The distinguished Senator from Ohio.

OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator **Metzenbaum**. Mr. Meese, I join my colleagues in adding my welcome to you here today. And in the words of a man whose memory I plan to invoke many times during these hearings, I want to make it perfectly clear that I have many, many questions in many, many areas.

Now, others on this committee will inquire of you concerning your views and activities regarding civil rights, legal services; your opinions on the exclusionary rule, and in a host of other areas.

I, too, share their concerns about your activities and views in those areas, but my basic concern relates to the question of your having been appointed in the first place. You were the former chief of staff of the President's campaign team. To me, it is that issue that is paramount and, in my mind, is determinative of the issue, even before we get to the point of considering Ed Meese, the man.

I believe these are very, very important confirmation hearings, not just because of your nomination, but because of the precedent that will be set by this committee and this Senate.

We will test whether the Senate means what it says. When there was no appointment before it, the Senate knew the answer. Now, with your appointment, we are called upon to live up to your earlier stated position.

The Watergate period was a sad and traumatic episode in our Nation's history, as we all remember. We went through four Attorneys General in that period—John Mitchell, Richard Kleindienst, Elliot Richardson, and William Saxby.

Although the office of Attorney General had previously been political, it had never been so politicized as it was by Richard Nixon. In October 1975, the Watergate special prosecutor staff released its final report. Among its final recommendations was the following:

> The President should not nominate, and the Senate should not confirm, as Attorney General or as any other appointee in high Department of Justice posts a person who has served as the President's campaign manager or in a similar high-level campaign role.

It went on to say:

> A campaign manager seeks support for his candidate and necessarily incurs obligations to political leaders and other individuals through wide geographic areas. If he then takes a high position in the Justice Department, he may take, or appear to take, official actions on the basis of those commitments rather than on appropriate legal and policy grounds.

Now, since that statement by the Watergate prosecutors, our distinguished colleague from Texas, Senator Lloyd Bentsen, has attempted on four different occasions to codify this recommendation into law.

On June 27, 1977, Senator Bentsen's amendment was adopted by the Senate—11 members of this committee were members of the Senate at that time—as part of the ethics in Government bill. .

The amendment reads:

> An individual who has played a leading partisan role in the election of a President shall not be appointed Attorney General or Deputy Attorney General. Individuals holding the position of national campaign chairman, national chairman of the finance committee, chairman of the national political party, or other comparable, high-level campaign roles involved in electing the President should be those considered to have played a leading partisan role.

Senator Bentsen in his floor statement that day eloquently phrased the issue:

> With all of the highly competent members of the legal profession that can be drawn from, it is simply not necessary to look just to the ranks of the President's campaign staff for top Justice Department personnel. It is time to insure the American people that law enforcement decisions will not be determined by partisan politics, either Democratic or Republican.

> If justice is to be impartial it must, in the beginning, be nonpartisan. It should not be run, or even given the appearance of being run, by people who march to a drumbeat emanating from the political advisers of any President or his party.
>
> Decisions as to whether cases are prosecuted or dismissed, whether appeals are taken or settled, must not depend on political influence.

In response to Senator Bentsen, the majority manager of the bill, Senator Ribicoff, accepted the amendment, as did the minority member, our colleague from Illinois, Senator Percy, who stated:

> I commend our distinguished colleague for bringing forth this amendment. I think it is a valuable addition to the bill and I accept it with enthusiasm.

Sadly, the amendment was stricken from the bill in the House-Senate Conference Committee, or we would not even be holding this hearing today. The Senate, which is the arm of Congress that has the constitutional duty to advise and consent, has spoken on this issue.

The Watergate special prosecution force concluded simply: "The President should not nominate, and the Senate should not confirm"—should not confirm; a flat statement, without asking one question, without any relevance to the qualifications of the nominee.

They made this statement because of the agony that this Nation went through due to the thorough and absolute politicizing of the Justice Department.

I talked this week with Henry Ruth of Philadelphia. Mr. Ruth was the Deputy Special Watergate Prosecutor under both Archibald Cox and Leon Jaworski, and eventually the special prosecutor when Mr. Jaworski resigned. It was Mr. Ruth who wrote the actual language of the Attorney General's recommendation.

I asked him to elaborate on the reasoning behind this recommendation, and here is what he told me:

> A high campaign official cannot help but give out a lot of chits during a campaign, and therefore it becomes very difficult to maintain the appearance of independence as Attorney General.

He went on to say:

> I can think of at least 20 types of decisions that an Attorney General is called upon to make that could pertain to this question—the whole area of civil rights law enforcement, some terribly sensitive judgments in the area of foreign and domestic intelligence, the use of the special prosecutor law, enforcement of environmental laws such as the Hazardous Waste Act, just to name a few.
>
> All you have to do is look at the annual report of the Department of Justice and you get an idea of the areas which can be of concern.

Mr. Ruth continued:

> There are those who respond with the argument that the President should be close to the Attorney General; that they should be friends. And that argument is not without merit, but our recommendation only pertains to a handful of people—two or three or five, at the most. Those would be the only ones disqualified.
>
> It just seemed to us that with about 600,000 lawyers currently practicing in the United States that the President would be given enough latitude to find an Attorney General in whom he had confidence, even if a handful of top campaign aides were disqualified.

Frankly, Mr. Meese, the issue before us today, aside from our personal evaluation of Ed Meese, relates to the sincerity and resolve of the 1977 commitment. Seven years ago, we knew what should be done. We should refuse to confirm, in the language of the

Bentsen amendment, an individual who has played a leading role in the election of a President.

You played such a role as chief of staff; you were the leader of the President's campaign effort. Really, the question before us relates to whether or not we really have learned anything from the Watergate experience.

Mr. Meese, I want the record to show I bear you no personal animosity, and I do not in any way mean to give any impression in these hearings, directly or indirectly, that you are a venal man. Everything I know about you convinces me that you are a decent, warm human being with a strong commitment to your family. You have dedicated most of your adult life to public service.

Possibly, one of your greatest personal strengths is your total loyalty to your President, now and when he was Governor of California, and also your total and unswerving loyalty to friends and associates. It is a fine trait, for which I commend you. All too often, it is missing today.

However, in our consideration of your suitability for the position of Attorney General of the United States of America, I believe that this unswerving loyalty may also be your greatest weakness.

I believe that your long political association with the President and others around him, combined with your long record of political connections in Government, business and private life, are exactly the kinds of associations that the Watergate prosecutors envisioned when they made their recommendation.

I have studied several instances in recent years where you have been involved in political situations that give me great pause. As these hearings unfold, I will have many questions for you, and possibly others, regarding these situations.

I am concerned about some aspects of these situations that give the appearance of the political cronyism and political back-scratching that were the nub of the problems faced by the Watergate prosecutors.

We have an opportunity to learn from history. Will we? If not, we have only ourselves to blame. Santayana said it best when he wrote, "Those who cannot remember the past are condemned to repeat it."

The CHAIRMAN. The distinguished Senator from Utah, Mr. Hatch.

OPENING STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman.

Mr. Chairman, along with my colleagues, I am very pleased to welcome Ed Meese to this committee and I look forward to these hearings as a means of enabling the people of this country to learn more about this fine nominee who will serve as the next Attorney General of the United States.

Mr. Meese, you can feel a great sense of honor in having been nominated by the President of the United States to serve in this country in this critically important position.

I must admit that like many of my colleagues, I do not come into these hearings without strongly developed feelings about the nominee. I have had the privilege of working with the White House and

Mr. Meese on a number of legislative matters over the past 3 years. We have had our differences on issues, but I have gained great respect during this time for the intellectual abilities and capacity, as well as the honest approach that the Attorney General-designate has shown in every case in every meeting that I have been in.

Without fail, I have found Ed Meese to be informed on the matters that are important to the country, articulate in expressing the administration's views, respectful of opposing opinions, and determined to work out the differences in a fair and an open manner. I would expect that this style of leadership would continue in whatever capacity Mr. Meese serves his country.

In succeeding William French Smith, Mr. Meese, you are following an individual who, in my opinion, will be judged by history as a fine Attorney General. It is no easy thing to call into question the entrenched policies or to reverse longstanding trends or to upset sacred cows.

But the Attorney General did embark in a variety of areas on just such a course. In areas such as antitrust, criminal justice, civil rights, and other areas, William French Smith attempted to effect change—important and positive change.

I am confident that you, yourself, will place your own unique mark upon the Justice Department and upon the legal policies of our National Government.

I do not know fully the themes of inquiry that will be directed toward Mr. Meese during these hearings. I would briefly comment, however, on one matter that will undoubtedly be the subject of significant focus; that is, the perspectives of our nominee on civil rights policy.

It appears that Mr. Meese, as with his predecessor is not only committed to colorblind public policies, but prepared to act upon such a view. Mr. Meese it seems has never reconciled himself to the modern view of some in the civil rights community that equal protection of the laws requires that individuals be categorized by their color, ethnic, or religious background; and that public benefits be apportioned to individuals on the basis of such categories.

I think that these hearings will be interesting hearings. I have met many people in Government. I do not know anybody who has a greater legal capacity, in my experience, or who has grasped legal principles more quickly or who expresses his opinion more frankly than Ed Meese.

I think he is precisely what we need in this position at this time. I have great confidence in your honesty, your integrity, your ability—the ability to be independent from the President, and from the Congress and to make the decisions that should be made in this country at this time.

I also have total confidence in your willingness and your attitude about enforcing the law, even those with which you may disagree. That is part of the job of an Attorney General of the United States.

You are a good man and you deserve to be treated as such; we intend to see that this is done during these hearings. And I just want to compliment you for being willing under very difficult circumstances to serve your country, to be here, to go under fire and to address some of the problems that will be thrown your way.

I just want to personally tell you that I have great respect for you and will continue to do so.

The Chairman. The distinguished Senator from Arizona, Mr. DeConcini.

OPENING STATEMENT OF SENATOR DENNIS DeCONCINI

Senator DeConcini. Thank you, Mr. Meese. It is nice to see you here. As you can tell, it is going to be a spirited few days before everyone will be satisfied that you should be appointed to this position.

I am satisfied that you are a good man, as the Senators from Nevada, Utah, and Ohio say that you are. I think, Mr. Meese, that you have a unique background as a criminal prosecutor, particularly since the present Attorney General does not have the experience of being a criminal prosecutor. I think that puts you in an advantageous position for the beginning of these hearings and helps you immensely in your legal career and your advice to the President.

However, Mr. Meese, at this point my concern is twofold. One is a concern about what you will do as the prosecutor and the chief law enforcement officer of this country in the area of drug enforcement and drug trafficking.

This administration has been, in my judgment, long on rhetoric and short on substance. I do know that the Vice President, with your assistance, has made some attempts to bring about some unity in the area of drug enforcement. But I also know that you and other members in the administration have counseled the President not to establish a coordinated office in drug enforcement. I understand that your feelings are that the White House or Justice Department can act more efficiently. But there is an issue that I hope you can resolve for this committee, which is, why you would encourage such a resistance to coordinate drug enforcement when you, as one of the deputy prosecutors in northern California took a significant role in coordinating drug enforcement activities with agencies outside of the the prosecutor's office.

My second point, Mr. Meese, concerns the primary responsibility of being the people's lawyer. This is an awesome task which supercedes in gravity the task of being the lawyer for the President. The President, regardless of who voted for him, is our President. He is the leader of this country. He is entitled to have particular concerns for certain economic programs and political bents, which is only normal. He holds that office because of these concerns.

But in my judgment the position of Attorney General, though nominated and appointed by the Chief Executive, must act independently of his particular political concerns. The difficulty you are going to have here, if any, is satisfying this committee and this Senator, that you have the courage to act independently of particular concerns. Your history demonstrates that you could probably have the fortitude to say "no" to President Reagan or any other President, when asked to do something that you feel is not consistent with the requirements of your office and is improper, notwithstanding the very close loyalty that you obviously would have for that President.

I hope you can take such a posture in a candid way because, in the past, we have heard nominees talk about such loyalties and insist that they will be independent. Then we observe them in office and there is no evidence that demonstrates an ability to shed philosophical loyalties or personal loyalties of the person who appointed these people.

I hope that you can meet the challenge, Mr. Meese, and convince this committee that you can act independently in the enforcement of civil rights, voting rights and antitrust, notwithstanding statements by the President, and other advisers that the Civil Rights Commission should be remolded, or that the Voting Rights Act should be altered substantially.

I have been advised by a colleague on this committee that it took a concerted effort by some of the committee members to convince you, the President and the present Attorney General that the Voting Rights Act should not be changed. Your ability to distinguish yourself from the President's intentions and to agree with the sound judgment of members on this committee who intervened in behalf of the Voting Rights Act, indicates that you do have the fortitude to act independently.

That is what I think the challenge is, Mr. Meese, and I wish you well in making that case here today. To me, this is a very serious consideration. This is not just another political appointment that will result in a benefit or nonbenefit for the President and his administration. This is a position of trust for all of the people.

Thank you, Mr. Chairman.

The Chairman. The distinguished Senator from Wyoming, Senator Simpson.

OPENING STATEMENT OF SENATOR ALAN K. SIMPSON

Senator Simpson. Well, welcome, Ed. You have the sandbags up around your chair there, do you?

Senator Biden. I resent that.

Senator Simpson. I am so pleased that we could start these hearings on a light, bipartisan note. [Laughter.]

I welcome you. I note that you and I are the same age; we served in the Army at the same time. I relate that because we both obviously trained and qualified ourselves for long hours on the rifle range. Do you remember that, with the M-1?

Now, you are about to be hauled up out of the range pit and become the target. That is your role here. You will be the target, and I think you are well prepared for it. But you also remember, I think, as I do, what happened when they would splatter away all day at the targets. On a complete miss, they would haul this remarkable red flag out of the pit, irreligiously called "Maggie's drawers." Do you remember that?

Mr. Meese. Yes.

Senator Simpson. After some of these pesky rascals on the committee have peppered away at you for their alloted or unalloted time in this place, that is what they will come up with—a great big goose egg.

But the ritual must be played out, as it should be. We have already heard a bit of the hype and hoopla and hoorah that is ahead of us, so dig in. What is wrong with you, Ed, is you are not doing it the way they would like and they are not in power. That is what is wrong with you; that is where you made your error.

But we have some members here who would flunk a saliva test waiting for you to get here [laughter] to do a tatoo on your freckled dome. That is what they are waiting for. And no experience is required to be a critic—none. Anyone can qualify. So we will trot out everything you have done or uttered, and yet if somebody gathered up the collected mumblings of Al Simpson, I would be in the clink.

So, as they vent their spleen on you, as the alleged alter ego of this evil President down the street, you are again acquainted with that remarkable ambivalence that goes with this city, a city where we have organizations that gather together and raise millions of bucks to take care of every known specie of tree, bird, beast, and brook.

Yet, hand them another human being and they will exhaust the group's treasury to thrash the guy, all under the guise of protecting somehow the rest of us from the wretched ogre at the table.

I think people see through that; a great thing—it works to keep the old membership up and keep the executive director eating or, for heaven sakes, get the building payments made after they sandbag the poor membership to set something up out in Arlington or Washington, DC that is an edifice to their success.

I have come to know you, to admire you, and you handle things with great intelligence and great grace and great good humor. And I have seen you and the very steady and gentle Ursula handle success and failure, and certainly the tragedy of the death of your own fine son, and I have seen you handle that beautifully.

You are people of strength and courage, so our sole purpose here, if we can get back to it, perhaps, is to determine your capacity as a lawyer to be the chief lawyer of the United States, the Attorney General of this country, and nothing more.

So, when the shot and shell has stilled, it will become obvious that your education, your training, your experience, your intellect, and your temperament eminently qualify you for the task that our President has chosen for you.

So I say good luck to you. As we say out in Wyoming, grab a tight rein on the bucker and come out of chute No. 4. You will need it. [Laughter.]

The CHAIRMAN. The distinguished Senator from Montana, Mr. Baucus.

OPENING STATEMENT OF SENATOR MAX BAUCUS

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Chairman, I would like to take this opportunity to address the nominee directly. Mr. Meese, it is obviously a great personal tribute to be nominated by the President of the United States to be Attorney General of the United States.

I am sure there is no lawyer in the country who does not envy your opportunity to serve as chief legal counsel of the Federal Government, and I am equally sure that there is no lawyer who would not be intimidated in assuming the incredible demands and responsibilities your position will entail if you are confirmed.

When I took the oath of office as a U.S. Senator, I also assumed a number of duties and responsibilities. Among the most solemn is my responsibility under the advise and consent clause of the Constitution to take part in the determination of whether your nomination should be confirmed.

My obligation in this process is to assure myself and the American people that you are a candidate of the highest integrity and competence, that you have an overriding commitment to the supremacy of the Constitution of the United States, and that your view of the proper role of the Attorney General is consistent with the best interests of the people of our country.

These hearings are, of course, vital to your confirmation by the Senate. They are also vital to the future of Federal law enforcement in the country. It is therefore incumbent on each of us to be forthright, thoughtful and candid in our discussions with one another today and in the ensuing sessions.

During our discussions, I intend to ask you questions on a variety of topics. I will ask you about your views on legislation designed to strip Federal courts of their jurisdiction over constitutional issues. I will also ask you about the relationship between your office in the White House and the Environmental Protection Agency's toxic waste enforcement efforts.

I will ask you about the possibility of conflicts of interest between your activities as a Presidential campaign official and your duties as Attorney General.

And I will ask you about what Congress and the Department of Justice can do to curb the anticompetitive activities of the railroads and the territorial monopolies of rail service.

I look forward to our discussion of these questions, and I wish you and your family well.

The CHAIRMAN. The distinguished Senator from Iowa, Senator Grassley.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. I, too, welcome your nomination, Mr. Meese. I have great respect for you. I know you to be informed on the law and the issues. If I have any doubts about your ability to carry out your work these doubts would only fall into the area I have already discussed with you; whether or not you or any other attorney general will adequately challenge the traditional policies of the entrenched professionals that will work for you and who have worked for the department a long time.

But even if you do not succeed in that effort, I predict you will still be an outstanding attorney general. I have listened to all the concerns raised this morning about you. And I can only conclude that the challenge you have at these hearings today is to satisfy those doubters and that all you have to do to satisfy doubters are three things.

And those are in consideration to your dedication to law enforcement and respect for the law; that that dedication to law enforcement and respect for the law outweighs your loyalty to your boss.

Second, that even though you are a hard liner on law enforcement, that position is tempered by your respect for constitutional rights.

And, third, even though you may be against big government, that that philosophy is moderated by your big heart. I am confident that you can satisfy these concerns and that you will be confirmed.

Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Alabama, Mr. Heflin.

OPENING STATEMENT OF SENATOR HOWELL HEFLIN

Senator HEFLIN. Mr. Meese, I neither praise you or denounce you. I will evaluate you and participate in the constitutional responsibility of advice and consent. Good luck.

The CHAIRMAN. The distinguished Senator from Alabama, Mr. Denton.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator DENTON. Thank you, Mr. Chairman.

Mr. Meese, I offer my congratulations; not only have I known you and your wife personally for 3 years, but I have studied your previous performance in positions of responsibility, particularly in California. From my personal and studied knowledge of you I consider you the most qualified nomination made by this administration to date.

I am sure that your record in displaying bipartisanship and compassion in the area of welfare reform in your California days will give the lie to those who might characterize you as hard hearted.

Having said that, I have one personal area with which I would deal. As Attorney General, you will have the principal responsibility of enforcement of laws applicable to many programs in not only the criminal area but in the civil area, as well.

And there is one new area in which my chairman has honored me with some responsibility in our law spectrum, a new concern known as terrorism. I am more than painfully aware, as a result of my immersion in this subject, that U. S. interests and the interests of freedom throughout the world are being attacked constantly by a war, a world war being conducted by the means of terrorism. We see it in the Mideast. We see it in Latin America. We see it in Southeast Asia. We see it within the territories ruled by the tyranny of totalitarian communism.

But as we learned on November 7, 1983, the citizenry and the American property within the United States are not immune from this problem. The Capitol bombing which was carried out by the armed resistance unit was, I believe, calculated to take the lives of many who would normally have been gathered in the Republican cloakroom that night.

Mr. Chairman and Mr. Meese, the bombing of the Capitol should remind us of the perils that are ahead of us that menace our especially open society. To enforce present laws and to pass new ones so as to preserve national security and at the same time preserve individual rights in the face of terrorist threats will be no small task.

From what I know of you, Mr. Meese, I feel confident that as Attorney General you will prove equal to this and the other tasks confronting you in the important position for which you are nominated.

Thank you, Mr. Chairman.

The **Chairman**. I believe that concludes statements by all members of the committee who are present.

Our first witness today is the distinguished and able Senator from California, Mr. Wilson. Senator Wilson, we will be pleased to hear from you.

STATEMENT OF PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator **Wilson**. Thank you very much, Mr. Chairman. I am very grateful to have this opportunity.

Mr. Chairman, I am privileged and proud to introduce to you the President's nominee for the office of Attorney General of the United States, my fellow Californian and close personal and professional friend for the last 15 years, the Honorable Edwin Meese III.

May I also introduce Mr. Meese's lovely wife, Ursula and his daughter Dana, both of whom are present here in the first row seated right behind Mr. Meese, sitting there in obvious proud support of the nominee.

The Meese's son, Lt. Michael Meese of the U.S. Army and graduate of the U.S. Military Academy would be here, I am sure, but he is on active duty at Fort Ord in California.

Most of you on the committee have worked with Ed Meese over the past 3 years in his capacity as counselor to the President. Some of you know him quite well. It has been my privilege and good fortune to have worked closely with Ed Meese in all three of my elected public offices; first, as a member of the California State Assembly when he was legal affairs secretary and then chief of staff to then Governor Reagan; next when I served as mayor of the city of San Diego, the city to which he came and which he graced as a leading civic activist and a leading citizen; and now as a member of the U.S. Senate it has been my privilege to work with him in his present capacity as counselor to the President of the United States.

This committee and then the U.S. Senate is required by the Constitution to examine the professional qualifications and the character of Ed Meese for the Office of Attorney General of the United States, the chief law enforcement officer of our Nation.

Mr. Chairman, I have no hesitation in predicting that your inquiry will confirm that Ed Meese is one of the most broadly experienced, professionally expert, and exceptionally well-qualified nominees for Attorney General to be considered by the Senate in modern times.

And I say further that a fair and honest examination will find him to be scrupulously fair, a compassionate realist and wise reformer, a man of conscience, conviction, and uncommon courage, a dedicated public servant, devoted to his country and to the rule of law, and above all, Mr. Chairman, a man of complete personal and intellectual integrity.

I have no fear of the committee's questions because I know that Mr. Meese need not fear any question, any legitimate, relevant question posed by this committee.

Ed Meese is the product of a warm and loving family of traditional values, of deep religious beliefs, and a family tradition of two generations of public service in his native Oakland, CA. After graduation from the public school system of Oakland, CA, he attended Yale University on a scholarship, earning a degree in public administration.

He then returned to California to enroll at the school of law at the University of California at Berkeley where his legal education was interrupted after the first year by a 2-year stint of active duty in the U.S. Army.

He returned to graduate from law school in 1958 and entered upon a professional career which has prepared him admirably for the office of Attorney General. Shortly after assuming his duties as deputy district attorney of Alameda County, one of the first offices in the State, he undertook the collateral duty, serving for 2 years as the official representative of both the California Peace Officers Association and the California District Attorneys Association before the California State Legislature. In this capacity he was responsible for monitoring hundreds of legislative proposals dealing with crimes ranging from shoplifting to major felonies.

During his 7-year period of service as an assistant district attorney and deputy district attorney, he was an active trial lawyer, an especially active trial lawyer.

Mr. Chairman, when Ed Meese is confirmed by the Senate we will have an Attorney General that has tried almost every kind of criminal case, from traffic violation to the most complex of felonies. His skill and energy as a prosecutor in Oakland quickly earned him assignment to the most difficult cases and an enviable reputation among judges, among his colleagues, and perhaps most significantly, among opposing public and private defense counsel. He was thought to be a thoroughly professional, tough but fair prosecutor.

He came to be admired as a prosecutor who, while vigorously protecting the rights of society and the victims of crime, keenly felt and scrupulously fulfilled his obligations as an officer of the court. He exhibited a special respect for and understanding of the rule of law that set him apart from the many lawyers who are content to become competent with the tools of their trade.

Ed Meese became instead one of those who study, teach, and shape the law so that it can better serve the needs of society. It was early in his career, during his years as assistant district attorney, that Ed Meese commenced a life long dedication to reform of the criminal justice system. He was chairman of both the Oakland bail reform program and helped to organize the first pretrial release program in California. And though these efforts are now taken for granted nationally as essential ingredients of a fair criminal justice system, they were, I would remind members of this committee, pioneering efforts.

Later, as legal affairs secretary to then Governor of California, Ronald Reagan, he served as the link between the Governor's office and the California judicial, legal, and correctional and law enforcement communities of the State. From 1966 to 1975 he chaired the

California Bar Association's Subcommittee on Legal Defense Services for Indigent Criminals and served as an active member of the Bar Association's Prison Reform Project.

He has consistently and forcefully advocated the right of the poor to adequate legal representation and has advocated the responsibility of the legal profession to provide it. These extensive efforts mark Ed Meese not only as a thoroughgoing legal professional, but as a public policy maker of the most decent impulses.

Recently he has served simultaneously as vice chairman of the California State Organized Crime Control Commission and as a member of the American Bar Association's Communities on the Future Committee. He has also been a teacher and a scholar of the law, teaching both law students and practicing lawyers at the University of California School of Law at Berkeley and at the Law School of the University of San Diego, and serving as a member of the advisory board of the Hastings College of Law, Center for Trial and Appellate Advocacy in San Francisco.

He has also directed a center at the University of San Diego for the study and research of criminal law. These activities all combine to provide Ed Meese with a level of professional expertise and a broad spectrum of legal experience seldom seen even in nominees for the highest level federal law enforcement appointments.

Beyond these strictly professional qualifications, Ed Meese has demonstrated a strong sense of community obligation by performing impressive community service in a variety of roles. In fact, those who would describe him as insensitive, unfair, or uncaring simply must not know Ed Meese's record and contribution as a volunteer. He has demonstrated particular devotion to the well being of our young people.

He served as volunteer legal officer to the Alameda County Youth Opportunity Board, an organization founded to help find jobs for young people. He has served first as vice president, then as president, and continues as a member of the board of trustees of Junior Statesman, a California foundation dedicated to promoting government and leadership interests in our high school aged young people from all walks of life, all backgrounds, and all economic circumstances. He was himself a participant in this program as a high school student. And last summer his daughter Dana Meese concluded her summer experience with Junior Statesman, as had her brothers before her.

Clearly, there is a pattern and a family emphasis upon public service that is continuing.

Ed Meese is an honorary life member and former board member of the National Education Institute, which provides programs of education and citizenship to elementary and high schools, and he participated in the Alameda County Delinquency Prevention and Family Assistance Program, one of the Nation's early, pioneering efforts to coordinate in a single program the services of housing, social services, justice, probation, education, health, and welfare agencies. The purpose of the program is to help young people and their families to break out of the economic and social circumstances that were contributing to their involvement in the criminal justice system.

He also served on the advisory committee for Crittenden Center, the first halfway house for parolees and drug offenders in Alameda County, providing guidance through a program aimed at curbing further drug abuse by providing offenders with an opportunity for rehabilitation and the break that they needed to reenter society as productive members.

In addition to these special activities directed towards improving the lot of young people, especially the disadvantaged young, Ed Meese has participated in a wide variety of other civic activities. He was a member of the board of directors of the California Center for Research in Education and Government. He helped found and later served on the board of the Institute for Contemporary Studies, a nonprofit foundation devoted to the study of public policy in current issues of national importance. He was founded and served as cochairman of the Coalition for Environmental and Economic Balance in my home city of San Diego. This coalition of business and labor interests represents a broadly based, community-wide approach to the problems associated with accommodating rapid population growth, of achieving commercial and industrial development, and environmental quality.

Ed Meese will bring high administrative skills required by the successful Attorney General. He holds a degree in public administration from Yale University. He served 6 years as chief of staff to the Governor of the largest State in the Union. He has served as vice president for administration of Rohr Industries, Inc., a Fortune 500 company and was also founder and chairman pro tem of the President's Cabinet Council on Management and Administration and just last fall, Government Executive Magazine chose Ed Meese to receive its first annual award for excellence in management and administration.

He is in short well prepared to deal with the complexities of managing the Justice Department.

Mr. Chairman, rather than go on filling the record with further facts and illustrations of Ed Meese's exceptional legal qualifications and his personal attributes of character and integrity, I will permit Mr. Meese to make his statement so that you and your colleagues may proceed with questioning.

Let me close with these few final comments. Ed Meese has dedicated almost all his adult life to the service of his country and to the rule of law. He has done so with courage, devotion, and complete willingness to make great personal sacrifices of the kind that public service so often entails.

Through it all he has remained a man of warmth and kindness and has built a record of which his admirers are justly proud. In every true sense of the word, Ed Meese is a patriot. Yes, Ed Meese has given uncommon service to his profession, to his city, to his State and Nation, both as a public servant and private volunteer.

But, Mr. Chairman, the best of his service is yet to come. He is eager to take up the challenge of his new office and to render the distinguished service he is so exceptionally well qualified to give. When he is confirmed as Attorney General, Ed Meese will be an activist, an Attorney General who will be remembered, one of the great ones with the keenness to see the need for change and the boldness, courage, and capacity to make it.

A great attorney general must be not only a fine lawyer and fine administrator, he must be as well an exceptional human being.

Mr. Chairman, Ed Meese is one of the best human beings any of us will ever be privileged to know. The Nation is lucky, very lucky to have him. And it has been my privilege to introduce him to this distinguished committee for which I thank you.

The **CHAIRMAN**. Thank you, Senator. Without objection I shall place in the record at this time a one page résumé on Mr. Meese.

Senator **WILSON**. He must have prepared that. I could not do it in one page.

[Material referred to follows:].

EDWIN MEESE III

Birth: December 2, 1931, Oakland, California.

Legal residence: California.

Marital status: Married, Ursula Herrick Meese, 2 children.

Education: 1949–53, Yale University, B.A. degree. 1953–54, 1956–58, University of California (Berkeley), Law School, J.D. degree.

Military service: 1954–56, United States Army. 1953–54, 1956–present United States Army Reserve.

Experience: 1954–56, United States Army, Army Officer. 1956–58, Piedmont Recreation Department, Recreation Supervisor. 1958–59, Alameda County District Attorney's Office, Law Clerk. 1959–67, Alameda County District Attorney's Office, Deputy District Attorney. 1967–69, State of California, Legal Affairs Secretary to the Governor. 1969–75 State of California, Executive Assistant to the Governor. 1975–76, Rohr Industries, Inc., Vice President. 1977–81, University of San Diego, Law Professor. 1976–81, Self-Employed, Attorney and Consultant. 1981-present, United States Government, Counsellor to the President of the United States. To be United States Attorney General.

The **CHAIRMAN**. Mr. Meese, do you care to make an opening statement?

Mr. **MEESE**. Yes, Mr. Chairman.

The **CHAIRMAN**. Stand up, then, and be sworn.

Do you swear the testimony given in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **MEESE**. I do.

The **CHAIRMAN**. Have a seat. You may proceed, Mr. Meese.

TESTIMONY OF EDWIN MEESE III, OF CALIFORNIA, NOMINEE FOR THE OFFICE OF ATTORNEY GENERAL

Mr. **MEESE**. Thank you, Mr. Chairman. Senator Wilson has already been kind enough to present to this committee my family, my wife Ursula and my daughter Dana who sit behind me.

And I wish also to thank you, Senator Wilson, for your introduction of me before this committee this morning. It is a real privilege for me to appear before this distinguished committee, and I look forward to and welcome the opportunity to answer fully and forthrightly your questions that you will propound during the course of these hearings. I would also like to say, Mr. Chairman, that I appreciate very much the courtesies and kindnesses which you and the other members of the committee have provided to me during the past weeks, as I have prepared for these hearings.

I was particularly grateful for the opportunity to meet with most members of the committee in advance of today's hearings. These meetings were most beneficial and informative to me and I hope mutually beneficial and informative to the members of the committee.

I look forward, if this committee and the Senate see fit to confirm me, to work closely with all the members of this committee in carrying out our mutual responsibilities to the law and to the people of this Nation.

I fully recognize the heavy responsibility which is placed upon the Attorney General by the Constitution and the statutes of this Nation. And I appreciate the confidence which has been placed in me as shown by the President in nominating me for this position.

As has been stated here by members of the committee in their opening statements this morning, the Department of Justice occupies a most important place in the structure of our Federal Government. It has a vital role in upholding the rule of law and in insuring that the constitutional guarantees and basic liberties of all citizens will be fully protected.

This Department has a long and distinguished history of dedicated service to the Nation and a tradition of integrity, professionalism, and independence. I want to assure you that I will do everything in my power, if confirmed, to uphold that tradition and to provide the leadership to maintain those important qualities of professionalism, fairness, and excellence which have characterized the work of the fine men and women in the Justice Department in the past.

There must be in that Department and throughout our Government a commitment to evenhanded justice and to the equal protection of the law for all citizens regardless of their race, color, sex, creed, background, or economic circumstances. There must be a similar commitment to the vigorous enforcement of the law and to the careful observance of fundamental principles of justice and due process.

I fully understand the gravity of these responsibilities and pledge my fullest commitment to these objectives. During the past 3 years, the Attorney General, William French Smith, has developed many innovations in the Department of Justice, particularly in the field of drug enforcement, organized crime, law enforcement training, civil litigation, and other areas too numerous to mention.

I would seek to continue, if confirmed, this creative approach to the activities of the Department. As we look to the future, there are new challenges and new opportunities that will confront the Department of Justice. I will refer to only a few this morning.

For example, electronic fund transfer will require a new look at interstate, white-collar crime. We must find better ways to help the victims of crime in our country. Changes in the economy and in trade and commerce require vigorous and carefully thought-out enforcement of the antitrust laws.

And the vigilant protection of the civil rights and civil liberties of all of our citizens must constantly receive the highest priority attention. For the past quarter of a century, as Senator Wilson has very generously relayed to you, as a practicing attorney, as a public official, and as a law professor, I have been committed to serving and to improving our legal, judicial, and public safety systems. I bring that continued commitment before you today, and I pledge, Mr. Chairman and members of this committee, that if confirmed, I will do everything in my power to uphold the highest traditions of the Department of Justice and to advance the cause of justice throughout this land.

Thank you.

The **Chairman**. Thank you, Mr. Meese.

A number of questions have been raised in the press concerning Mr. Meese's nomination.

Senator **Kennedy**. Mr. Chairman, could I just, as a point of information, ask how you intend to proceed. I know my colleague and the ranking member, Senator Biden, has had to absent himself. But could you inform us at the outset how we intend to proceed, so that the members are able to determine their own questions.

The **Chairman**. I would be glad to, Senator. It is incumbent upon me as chairman of the committee to insure that these matters are fully explored. I, therefore, intend to take sufficient time this morning to question Mr. Meese regarding these issues.

Upon completion of those questions, we will allow the ranking minority member, Senator Biden, or anyone he wishes to designate in his place, an equal amount of time. Following Senator Biden we will alternate between sides allowing each Senator 15 minutes for questions. If additional questions remain after round one, we will repeat the process with the exception of the initial extended time utilized by Senator Biden and myself.

Mr. Meese——

Senator **Metzenbaum**. Mr. Chairman, could I just inquire of you, this is a rather unusual procedure that I have not experienced in this committee previously nor in any committees where two members of the committee, the chairman and the ranking member, receive a disproportionate amount of time for a round of questioning and then the rest of us are limited to 15 minutes.

And I just wonder whether in the area of fairness and whether it would not be right for all parties to have the same amount of time, 15 minutes, and then go to the second, third, or fourth, as many rounds as necessary.

I do not wish to impose upon the chairman's thinking on the subject, except I think that every effort should be made to conduct the hearings in a manner that indicates that we are equal among equals, as Senator Mansfield used to say.

The **Chairman**. Senator, you may rest assured that equal time is allowed, as I stated. I feel incumbent, in view of the various reports in the press and statements that have been made, to take sufficient time to go into some of these matters. Then Senator Biden, the ranking member will have an equal amount of time.

Then all members will have equal time, 15 minutes each. And I assure you it will be conducted in an even manner.

Senator **Laxalt**. Mr. Chairman, I might say, and I think I speak for my colleagues on this side of the aisle, that I do not think any of us have a problem in granting both you and Senator Biden this additional time. And if that poses an overall time problem, I do not think any of us would have any problem in yielding a portion of our time for that purpose.

Senator **Kennedy**. Mr. Chairman.

The **Chairman**. Senator Kennedy.

Senator Kennedy. I think the point that is being made here is that the Chair has respected the fact that each of the members have different observations to make in their opening comments and statements. There were varying periods of time which were acceded to. Some were more lengthy and others were shorter.

And it would certainly appear to me that if the members have such expression that they ought to be able to express it so that the nominee has at least some awareness and understanding about the areas which are going to be pursued.

But as I would think in terms of the questioning of the witness, that the procedures that have always been followed in the past have been a rotating process in which the members have been treated equally. I would certainly think that the Chair obviously has discretion about how we are going to proceed, but it would seem to me that an equal allocation of time and the ability to question the witness is something that I think has been the tradition of the committee.

And it would certainly be a procedure which I think commends itself to a more complete record for not only the members of this committee, but for the Senate. So I think the point that has been made by the Senator from Ohio, and that is that in the allocation of questioning time, we rotate it back and forth in an equal time is not an unreasonable why to proceed.

Senator Hatch. Mr. Chairman, I do not think anybody denies that the distinguished chairman and the ranking minority member do have a number of perfunctory as well as other types of questions that they need to pursue to see that this hearing proceeds expeditiously. We have done that in the Labor Committee. Both of you have been on the Labor Committee and we have always tried there to make sure that everybody has fair treatment.

Now, I think, Mr. Chairman, that if there is any question about equal time after you and Senator Biden have finished, then we ought to make sure that there is equal time given. But I see why the expeditious approach that you have outlined is a good approach.

Senator Kennedy. Just a point, if the Labor Committee example is pointed out, in the allocations of the time those were worked out previously and the questions were worked out previously between the majority and the minority prior to the course of the hearing.

That is not my understanding at this present time. And the questions that were worked out in that particular committee when there was a greater time that was allocated was worked out with the full understanding, awareness, and cooperation and knowledge of those on both sides.

This procedure which has been outlined here comes as a completely new procedure for this committee and I would dare say for at least in the other committees which I have served on.

And I think the point that has been made here, that we, in the questioning aspect of it, that we allocate the time and rotate in the traditional way that has been done by this committee, seems to me to be the way in which we can have the fullest examination of the hearings.

The Chairman. I might say, Senator, that in your Carter hearings and some others, I think the chairman and the ranking member there took more time in the beginning. If you are dissatisfied, I would be pleased to submit the matter to the full committee for a vote.

Senator **Metzenbaum**. Well, we would ask. [Laughter.]

The **Chairman**. Let us get quiet.

Do you wish a vote or not?

Senator **Metzenbaum**. Well, Mr. Chairman, we are appealing to your sense of fairness because it is pretty obvious——

The **Chairman**. It is not a matter of fairness. The committee can settle it if they are not pleased with my ruling. Now, how do you stand.

Senator **Metzenbaum**. Mr. Chairman, let us not get excited about it.

The **Chairman**. I am not getting excited, but I will have a vote of the full committee if you are not satisfied.

Senator **Metzenbaum**. Mr. Chairman, I would point out to you, to the best of my recollection, we have never followed this procedure before in this committee.

The **Chairman**. Well, we are going to do it today even if we have not done it before.

Senator **Metzenbaum**. Well, I am not certain that that reflects well on the conduct of hearings having to do with——

The **Chairman**. Well, that is your opinion. Now, do you want to appeal to the full committee or not?

Senator **Simpson**. Mr. Chairman, I would be glad to relinquish any time I have. I just have a couple of questions. But the issue is, it is obvious Senator Biden assisted in making this recommendation and he is not here. If he were here, I doubt very seriously we would be going off on this tack. If Joe is here, I would surely appreciate him coming here because it seems to me that the arrangement was made and I see nothing——

The **Chairman**. Well, he was aware of it. I do not know that he necessarily approved of it. He was informed about it. [Laughter.]

We have got to proceed. Now, we are going to proceed the way I ruled unless an appeal to the committee—if there is any appeal to the committee, speak up now.

All right. We will proceed as I have ruled.

Mr. Meese, you have been nominated to be the Attorney General of the United States. What specific experience qualifies you to serve in this extremely important position?

Mr. **Meese**. Mr. Chairman, as has been related by Senator Wilson, I have had the privilege and opportunity over the past quarter of a century to serve in various positions in private law practice, in public office, and as a law professor.

Specifically, I have served for 8 years as a deputy district attorney in the county of Alameda, CA, during which time I had a variety of activities in virtually all phases of the criminal law. I also served during that time as legal advisor to the Alameda County grand jury on both civil and criminal law matters, as well as serving as a representative of law enforcement in California to the California Legislature.

Following that service as the legal affairs secretary to the then Governor of California and as chief of staff, I was able to engage in virtually all aspects of governmental law in the State of California, which covered virtually the same types of activities as are covered by the Attorney General's office and by the Department of Justice at the Federal level.

Following that I served as vice president of a firm and had the office of general counsel of that firm and had the lawyers in that firm as well as the equal opportunity and industrial relations activities of the firm, under my supervision.

Subsequently, as mentioned again, I have been the director of a center for criminal justice research and policy. I have been a professor of law. And I have more recently had 3 years of experience at the Federal level in virtually all aspects of governmental law from a policy standpoint.

The **Chairman**. Mr. Meese, as a former high-level official with the Reagan for President and Reagan-Bush campaign, can you insure this committee that you will perform your duties in an independent and uncompromising manner, and that you will take whatever action is necessary to maintain the integrity of the office of Attorney General?

Mr. **Meese**. Mr. Chairman, I do so assure this committee. I want to also state, in view of questions that have been raised earlier, that at no time during my service as a member of the Reagan campaign committee or at any time have I ever incurred any personal, political, or other obligations which would in any way interfere with my ability to carry out the duties of Attorney General, if confirmed, in a thoroughly impartial, independent, and proper manner.

The **Chairman**. Mr. Meese, in February 1983, there was an allegation of undue influence concerning the propriety of your transfer from the U.S. Army Retired Reserve to an Active Reserve status, and your subsequent selection for promotion from the rank of lieutenant colonel to full colonel.

Would you please tell the committee the facts and the circumstances, as you know them to be, surrounding these events.

Mr. **Meese**. Mr. Chairman, in 1981, on or about July 1 of that year, I had had some informal conversations as to whether I would be interested in returning from a Retired Reserve status to an Active Reserve status in a mobilization designation position with the headquarters of the Selective Service Commission.

I indicated at the time that I would be interested because I have had a long opportunity to serve in the Army, was very much interested in the Army, and believed that as a member of the Army Reserve I would be able to keep up my knowledge of current Army doctrine and current activities of the Army, and that this would be beneficial both to my service as a reservist and also to my other position in civilian life.

I also stated at that time that I wanted to be absolutely sure in view of my civilian position that there was no special treatment, no favoritism, and no bending of any rules in regard to my case.

This was made clear at that time and several times subsequently whenever I had the opportunity to discuss this matter. I was transferred from the Retired Reserve to the Active Reserve and was assigned to the headquarters of the U. S. Army element of the Selective Service System. I served in that capacity as a mobilization designee. As I am sure the chairman knows, because of your own reserve background, a mobilization designee does not attend regular weekly meetings or monthly meetings, but is required to maintain professional competence, professional knowledge and to perform various periods of active duty at the request of his or her particular command.

In this case I did do that, and then in October or November of 1982 came up before a mandatory promotion board. At that time I submitted the necessary documents and papers for that promotion board. And at that time again I made it clear that I requested absolutely no unusual or special treatment and, indeed, wanted to be sure that my case was handled in the ordinary course of business.

Subsequently, as you mentioned, in February of 1983 a question was raised and there was a full and complete investigation by the Inspector General of the Army. The result of that investigation clearly verified the fact that I did not seek any special treatment, and indeed, made specific representations to the contrary, and the investigation further stated that at no time did I have either any involvement in, seeking of, or knowledge of, any special treatment.

Senator METZENBAUM. Mr. Chairman, I would just ask if he would have any objection to our making that entire report a matter of the record.

Mr. MEESE. I would leave that to the discretion of the Chair, Senator.

Senator METZENBAUM. Do you personally have any objection?

Mr. MEESE. I have no personal objection but I believe that because of the usual sanctity of Inspector General reports, that is a matter between the committee and the Army.

The CHAIRMAN. I might say for the benefit of the committee, those present, that this report is confidential. It is classified. But I have made the report available to the distinguished Senator from Ohio. He has had a chance to read it. He can ask any questions from it he desires.

Mr. Meese, I would like the record to reflect that I have found absolutely no wrongdoing by Mr. Meese involving his promotion to colonel. I have reviewed the official report of the Inspector General, Department of the Army, dated July 15, 1983, and I have found nothing in the report which shows any wrongdoing on Mr. Meese's part.

In fact, the Army, investigation found that, although the Army action was wrong, Mr. Meese had no hand in this matter. To clarify the record, I would like to read the conclusions reached by the Army Inspector General investigators, concurred in by the Inspector General of the Army and approved by the Vice Chief of Staff of the U.S. Army, and I quote:

> 1. Applicable laws, regulations and administrative procedures were misapplied, violated, or ignored in order to return Mr. Meese to an active status in the U.S. Army Reserve;
>
> 2. No action was taken to gain approval for Mr. Meese to serve beyond his mandatory removal date (MRD), and, therefore, he has been serving without authority beyond that MRD since July 7, 1981;
>
> 3. Mr. Meese should have been screened upon his assignment to the Headquarters' Selective Service System (SSS), to identify him either as available or not available for mobilization; further, because of his position as counselor to the President and the likelihood that he would not be mobilized, he should not have been transferred to the ready reserve SSS or assigned to a mobilization designee position;

4. Mr. Meese, although selected for promotion to Colonel, was not qualified to be so selected because he had not met the education requirements for promotion at the time the board convened as required by regulation; and

5. Mr. Meese was not involved in, nor did he have any knowledge of, any of the administrative procedures followed to return and retain him on active reserve status.

Mr. **Meese**. Mr. Chairman, may I make one further comment concerning this matter?

The **Chairman**. Yes; you may.

Mr. **Meese**. Having learned of the results of the inspector general report and so that this matter will not be an issue before this committee and so that there is no possible future conflict between my serving in the Active Reserve and the job for which I am being considered at the present time, I have asked the Army, through written request to the appropriate command, to transfer me back to the Retired Reserve so that I will assume essentially the same status that I had prior to July 1981.

Senator **Metzenbaum**. Did you only do that after——

The **Chairman**. Just a minute. You have not got the right to question yet.

Senator **Metzenbaum**. Oh, I did not know that.

The **Chairman**. Yes, you did know it. You were told that.

I think it would be beneficial also to include some of the comments contained in the inspector general's report relative to this last conclusion.

> It is emphasized that Mr. Meese was not personally involved in any impropriety in this matter. In the opinion of the investigating officers, Mr. Meese had no knowledge of the procedures and administrative actions taken to return him to an Active Reserve status.
>
> Finally, witnesses' testimony indicated that not only did Mr. Meese not ask for special consideration in his behalf, he specifically requested that he not be accorded such consideration.

I felt that should be brought to the attention of the committee.

In light of this investigation and the findings, I see no purpose in pursuing this matter any further.

Now, Mr. Meese, you were the vice-chairman of the California Organized Crime Control Commission, which released a report in 1978 identifying numerous organized crime figures living in California. It has been alleged that Sheriff John Duffy, of San Diego, who was being considered for an appointment to the President's Commission on Organized Crime, defended the character of some individuals named in that 1978 report.

Mr. Meese, would you tell the committee the facts surrounding the proposed appointment of Sheriff Duffy to the Crime Commission and your relationship with him?

Mr. **Meese**. Mr. Chairman, I am acquainted with Sheriff Duffy, who is well known both in the State of California and in national law enforcement circles as an outstanding law enforcement executive.

When I was asked by the Justice Department, as were others who have knowledge of people in the law enforcement community for a series of names that could be considered for the Organized Crime Commission, Sheriff Duffy, who had been a past president of the California Peace Officer Association, the California Sheriff's Association, who serves on the National Executive Board of the National Sheriff's Association and who is president currently or was at least at the time of the Police Executive Research Forum, a national organization of top law enforcement officials, I included his name among other names that I submitted to the Justice Department for their review and investigation for possible appointment to the Organized Crime Commission.

Thereafter, I received a letter in the mail from an attorney who had been involved in the *Penthouse* case, a rather well-known piece of litigation in California, who brought to my attention some allegations concerning Sheriff Duffy.

The entire communication from this attorney, which included these allegations, was sent to the Justice Department for their investigation and for their consideration in reviewing Mr. Duffy as a possible member of the Commission.

The Justice Department, after a complete investigation of Sheriff Duffy, found that there was no reason why he could not serve on the Organized Crime Commission and that there was nothing in his background which would, in any way, disqualify him from that position.

Nevertheless, Sheriff Duffy, feeling that a great public comment about this matter might infringe on the ability of the Organized Crime Commission to do its duty, withdrew from any further consideration and was not appointed.

The **Chairman**. I have been informed that the FBI found no indication of any impropriety on the part of Mr. Meese in his associations with Sheriff Duffy, and, further, that any allegations relating to the sheriff did not involve Mr. Meese.

I felt the committee should have the benefit of that.

Mr. Meese, on February 24, 1983, Miss Rita Lavelle, formerly the Assistant Administrator for Solid Waste and Emergency Response at the Environmental Protection Agency, testified before the Senate Environment and Public Works Committee.

Miss Lavelle told the committee that from the time her name was submitted for confirmation until her dismissal, that she had approximately 10 or 12 either phone or personal contacts with you or another White House representative.

Later in response to a question as to whether Miss Lavelle personally talked to you without the Administrator of EPA being present, Miss Lavelle responded that she spoke with you on the phone two or three times and to quote Miss Lavelle, "It was more a status report on a particular site."

Mr. Meese, it has been reported that Rohr Industries, Inc., where you were vice president from 1975 to 1976, was responsible for approximately 11 percent of the toxic substances dumped at the Stringfellow acid pits near Riverside, CA. This took place prior to 1972 when the dumping was outlawed.

Now, Mr. Meese, would you tell the committee how many times you recall speaking with Miss Lavelle while she was Assistant Administrator of the EPA, and did you ever have any discussions with her concerning the Stringfellow acid pits or any toxic waste sites?

Mr. **Meese**. Mr. Chairman, during the time that Miss Lavelle served in the Government, I can remember talking with her on approximately four occasions, although there may have been one or two more that I do not recall.

I do not recall ever discussing with her any particular site. The occasions on which I did talk with her that I can recall included one meeting in my office, which was attended also by the Administrator of EPA, in which she and Miss Lavelle and others from that office were seeking additional budgetary support so that they could accelerate the pace at which the Superfund Program was being implemented.

On another occasion actually prior to that, I was present at the time of Miss Lavelle's swearing in. I also met with her among all the top executives of the EPA at a midterm planning conference at the EPA headquarters, and I remember talking with her on the telephone the day after she was removed from office by the Administrator of the Agency.

These are the only occasions that I recall having conversations with her or being present with her, but at no time did I discuss with her anything pertaining to Rohr Industries. As a matter of fact, I knew nothing about Rohr Industries or these events you described that happened in 1972. To the best of my knowledge, they were never discussed with me during the period I was at Rohr, which was some years later. They were certainly not discussed with anyone in the EPA by me nor did I talk with Miss Lavelle or others in the EPA about any particular toxic waste site.

The CHAIRMAN. For the benefit of the committee, I have no information that is contrary to what Mr. Meese has stated.

Mr. Meese, some questions have been raised concerning your personal finances. I would like, at this time, to delve into some of those transactions.

Now, this is rather lengthy, but let me go over the pertinent sequence of events as I understand them. Available information indicates that in April 1975 you had a mortgage on your home in La Mesa, CA, in the amount of $104,000.

If you wish to make note, feel free to do so. In July 1979, you took out a second deed of trust with the San Diego Federal Savings & Loan Association for $16,000 on the same house.

In February 1981, you purchased your home in McLean, VA, for $265,000 with an outstanding first mortgage of $150,000, payable to the Washington-Lee Savings & Loan Association.

Also, in February 1981, a third deed of trust was recorded in the amount of $132,000 on the La Mesa, CA, property. In July 1981, you received $40,000 in unsecured loan arranged by J.R. McKean of California.

In December 1981, you received an additional $20,000 unsecured note, also payable to J.R. McKean of California. In May 1982, a fourth deed of trust on the La Mesa residence was recorded in the amount of $21,000.

In September 1982, Mr. Irvin E. Howard of California obtained a loan of $246,000 from Great American Savings & Loan, and purchased your La Mesa home for the price of $307,500.

In November 1982, you executed two new promissory notes in the amount of $40,000 and $20,000 to replace the original notes in that amount which were previously executed in July and December 1981.

In June 1983, Mr. Howard sold the La Mesa residence for $275,900, reflecting a loss of $32,500. In August 1983, you met with

Mr. McKean in his office and signed an application for an $80,000 loan to be secured by a second trust on your McLean residence.

At the same time, you paid $100 in interest to McKean, reducing the total indebtedness which existed at that time from $80,100 to $80,000. In September 1983, you obtained an $80,000 unsecured note from the National Bank of Commerce, Washington, DC, and then that same month, you liquidated the $80,000 note which included both interest and outstanding principal.

Mr. Meese, I realize that might sound complicated. However, they were your transactions, and I ask you now, do you agree with the chronology as I just outlined it?

Mr. **Meese**. Mr. Chairman, yes, I do agree generally with the chronology. I would like to make a couple of points to the committee. First of all, I do not know the amount of my own knowledge of the Howard loan, since he took that out totally separate from any knowledge on my part, nor do I know for what price he sold the property in June 1983 or what any profit or loss might have been at that time.

There are two additions I would like to make to the chronology, if I may. One is that this year, I made an additional payment to Mr. McKean of $3,340.12, which was the additional interest that was due between June 1983 and September 1983 as to the interest on the $80,000 until it was paid off, and also the interest on the interest so that there would be no question of forebearance on the collection of the interest that was due during the period of time from the start of 1983 up until the time that the final payment was made in February of this year.

A second matter I would like to bring to the attention of the committee relates to the interim funding that was received from the National Bank of Commerce, the $80,000 unsecured loan in 1983; that was interim financing while we processed my application for a second deed of trust on the property in McLean, VA.

The deed of trust for that property has now been signed. I understand that it is in the process of being recorded and will take effect on approximately March 15 as a second deed of trust; thus, that loan as well as the other loan on my McLean property will be secured.

So, the total indebtedness that the Meese family has at the present time is approximately $150,000, plus the $80,000, or $230,000, all of which is secured by our home in Virginia, which is worth approximately $300,000.

Let me also state, if I may, Mr. Chairman, that as I think can be seen, the reason for and the necessity of obtaining these loans was due to three factors: first of all, the fact that I did, in coming to Washington, experience a material decrease in my annual income; second, the fact that my home in California, which we had expected or hoped would sell rather quickly and which was the basis for these loans, did not sell for 20 months.

As a matter of fact, as I have indicated in a letter to you, Mr. Chairman, which I believe has been distributed to all members of the committee, I paid something like $43,000 in interest on the loans on the home in California, as well as something in the neighborhood of $23,000 or more in interest to John R. McKean as trustee during the past 2½ or 3 years.

In addition to this, of course, there were unexpected expenses which I had to incur in coming here, such as the expenses of closing out a law practice; purchasing a leased car that I used in my business; the expenses related to tuition for two of my children, one in high school and one in college; the unanticipated expense of moving to Washington, DC, none of which was reimbursed by the Government; and various other expenses such as this.

The CHAIRMAN. I might say that the facts reveal a February 1984 payment of $3,340.12 represents additional interest on the $20,100 that was due as of June 10, 1983. Is that correct?

Mr. MEESE. That is correct, sir.

The CHAIRMAN. Now, Mr. Meese, my question concerning these events really will be in two parts. First, would you describe the source and amount, including terms and rates, of all loans issued to you Since 1975, and the circumstances surrounding the issuance of each loan?

And, second, would you go into the relationship you have with John R. McKean, and particularly any role you played in the selection and appointment of Mr. McKean to the Board of Governors of the U.S. Postal Service?

Mr. MEESE. The answer to your first question, Mr. Chairman: Since April 1975, other than the loan you mentioned initially that I had in April 1975, there was the deed of trust on our home in San Diego County, which was approximately $104,000, then a second deed of trust, as you mentioned in your chronology, of $16,000, the purpose of which was to pay for a new car and also for some remodeling and improvements on our home.

Prior to coming to Washington, there was one other loan that I took out. I believe there was a $6,000 loan for my law practice for a line of credit with the Bank of America, all of which was paid back prior to my coming to Washington.

While I have been here, I have taken out, as you mentioned, the deed of trust of $150,000 on our home in McLean. In addition to that, there was the swing loan of $132,000, which was secured by a mortgage on our home in California, which was necessary for the down payment and for improvements on the McLean property. It was a new home and we had to do various things in terms of landscaping and interior improvements.

A further deed of trust was taken out on the property in California, and the purpose of that was to pay various monthly payments that were due on our homes both in California and in McLean, VA. These constitute, then, the four deeds of trust on the home in San Diego.

In terms of the two other loans that were taken out, one was the loan of $40,000 and $20,000, as you related in your chronology, from Mr. McKean, for a total of $60,000. And then that was combined with the amount of interest that had accrued on or about June 20, 1983, and that totaled $80,100, which was put together into a single debt.

As mentioned, that note was paid off both by $100 in interest paid in August, and ultimately the entire balance was paid off, the $80,000, in September 1983. And then, as mentioned, through interim financing and a second deed of trust that debt is now secured by our home in McLean, VA.

Let me state that at all times, even at the height of all of these loans taking place, there was more than $100,000 in excess security in the two homes that we owned, which together valued approximately $565,000. And I believe at no time did the total loans amount to more than something in the neighborhood of $480,000.

So, we felt that there was ample security at all times, and we have liquidated these loans as rapidly as possible.

Now, if I may, Mr. Chairman, I will go on to the second question as to Mr. McKean. I was introduced to Mr. McKean during the early part of 1981 by a colleague in the White House for whom Mr. McKean had served as a tax accountant and financial adviser.

Because of the cash flow problems that we were experiencing and because I needed assistance, obviously, to prepare my tax returns based upon the complications of liquidating a law practice and changing our location to the east coast, I talked with Mr. McKean, I believe, for the first time in June 1981.

At that time, Mr. McKean suggested that a loan would be appropriate in order to help with the cash flow problems and to pay the outstanding expenses and future expenses that might be incurred in December of that year when tuition payments would be due for my son's college and my daughter's high school education.

We did arrange such a loan in June, as has already been chronicled here. After the loan was complete and was going forward, toward the end of July, there was a regular meeting of the personnel committee, which is the staff screening or review committee on which I sit along with others in the White House. At this meeting the Presidential personnel office presented us with a list of candidates for discussion for a position on the Board of Governors of the U.S. Postal Service.

The Presidential personnel office was seeking someone for that position who had broad business background and had a philosophy consistent with that of the President, which was to bring a businesslike approach to the Postal Service.

It was during that meeting that one of my colleagues suggested that Mr. McKean ably fitted those qualifications. That name was then turned over to the Presidential personnel office, which looked into his qualifications and investigated him, as they had the other possible candidates for the job.

Some weeks later, the name of John R. McKean came back to the staff review committee as the Presidential personnel office's recommended nominee for the President. It went through us, was ultimately presented to the President and was approved by him, and he did appoint John McKean, which was ultimately, I believe, confirmed by the Senate for the Postal Board of Governors.

Mr. McKean has served on that Board ably since that time. As a matter of fact, he has more recently been elected Chairman. It was not my suggestion that John McKean be appointed, but I can say that I knew no reason, and know no reason now why he should not serve in that capacity.

The **Chairman**. On February 27, 1984, I wrote you concerning this matter, and I believe on February 29, 1984, you responded. And in your response you also attached that to a letter to the Honorable William D. Ford, chairman, Committee on Post Office and

Civil Service, House of Representatives, from the Comptroller General of the United States.

We have placed this in the folder of each Senator on this committee so it would be available to them and, without objection, I shall now ask that this be placed in the record of the hearings.

[Letter follows:]

STROM THURMOND, S.C., CHAIRMAN

CHARLES McC. MATHIAS, JR., MD.
PAUL LAXALT, NEV.
ORRIN G. HATCH, UTAH
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VINTON DeVANE LIDE, CHIEF COUNSEL AND STAFF DIRECTOR
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DEBORAH G. BERNSTEIN, CHIEF CLERK
MARK H. GITENSTEIN, MINORITY CHIEF COUNSEL

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

February 27, 1984

Mr. Edwin Meese III
The White House Office
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. Meese:

The financial information provided to my office by you reveals a substantial increase in indebtedness since your appointment to federal office. In addition, articles have recently appeared in the media raising questions about your personal finances. Therefore I request, on behalf of the Committee, the following information:

1. Please describe the source and amount (including term and rate) of all loans issued to you since assuming federal office and the circumstances surrounding the issuance of each loan.

2. Please describe your relationship with John R. McKean and your role in the selection and appointment of Mr. McKean to the Board of Governors of the U.S. Postal Service.

3. With respect to the sale of your former residence in La Mesa, California, to Mr. and Mrs. Irv E. Howard, please describe:

    (a) Your relationship with Mr. and Mrs. Howard;

    (b) Mr. Thomas Barrack's role in the sale of the house and your relationship, if any, with Mr. Barrack; and

    (c) Your role, if any, in the appointment of Mr. Barrack to a position at the Department of Interior and his subsequent selection and nomination to be Assistant Secretary for Trade Development at the Department of Commerce.

Your attention to this matter is greatly appreciated.

With kindest regards and best wishes,

Sincerely,

Strom Thurmond

Strom Thurmond
Chairman

ST:jtn

THE WHITE HOUSE
WASHINGTON

February 29, 1984

Dear Mr. Chairman:

This is in response to your letter of February 27, 1984, requesting information regarding questions which have been raised concerning my personal finances. I have undertaken to answer the questions in the order asked.

QUESTION NO. 1

You asked that I describe the source and amount (including term and rate) of all loans I have obtained since assuming federal office and the circumstances surrounding the issuance of each loan.

I have gone back and attempted to reconstruct all of the financial dealings in which I have engaged since my assumption of duties as Counsellor to the President. Because questions have also been raised concerning the sale of my residence in La Mesa, California, I have expanded somewhat on my answer to your first question to provide financial information concerning the purchase of that property. I purchased my home at 10911 Sunray Place in La Mesa, San Diego County, California (the "San Diego residence"), on April 21, 1975. The purchase price was $132,000. In connection with that purchase, a first Deed of Trust was issued in the amount of $104,000 at 8½ percent for 30 years by San Diego Federal Savings and Loan Association, an institution with which I have since done business for many years. Subsequently, on July 16, 1979, I took out a second Deed of Trust on the San Diego residence in the amount of $16,000. The interest rate on this loan was 11½ percent. The term was 30 years, payable to San Diego Federal Savings and Loan Association.

Shortly after my arrival in Washington, I purchased my present residence at 1075 Springhill Road, McLean, VA, for $265,000. The purchase closed on February 12, 1981. In order to purchase my present home, I obtained an unsecured 90-day demand note for $130,000. This note was replaced by a demand note for $132,000, executed on February 14, 1981, and secured by a third Deed of Trust on my San Diego residence. These notes constituted a "swing loan" providing me the necessary funds to make a down payment on the McLean residence and for other improvements to the residence. I also obtained a first mortgage on the McLean property from Washington and Lee Savings and Loan Association of Virginia, in the amount of $150,000 at 13 percent for 27 years. This mortgage was purchased by San Diego Federal Savings and Loan at par on April 2, 1981, and I have continuously paid my mortgage payments to San Diego Federal Savings and Loan, now Great American Savings and Loan, since that time. My San Diego residence had been on the market but had not yet sold, which necessitated the "swing loan" from San Diego Federal Savings and Loan Association.

I had planned to retire the bulk of my indebtedness from the proceeds of the sale of my San Diego residence. However, as of June 1981, it still had not been sold. It was at this time that I engaged the services of Mr. John McKean to advise me on tax and other financial matters. I was encountering cash flow problems which evolved primarily from the fact that my San Diego residence had not sold as I had anticipated, and from a number of factors such as excessive tax withholding; expenses associated with closing my law practice and moving to Washington, D.C.; and tuition expenses for my children. I met with Mr. McKean in mid-June 1981, at which time he developed a financial forecast which reflected that I would, absent the sale of my house, encounter a cash flow shortfall of approximately $60,000 in the ensuing year. Accordingly, I arranged with Mr. McKean to borrow from a loan fund administered by the firm of J.R. McKean, Accountants. It was agreed that I could borrow the amount of $60,000 to be drawn in two installments, one of $40,000 and another for $20,000 should it be needed.

The first loan was in the form of an unsecured demand note payable to J.R. McKean as trustee, with interest at 21 percent from July 1, 1981, until September 30, 1981. Thereafter, the interest rate was to be 18 percent or the Bank of America prime rate, whichever was greater. Interest payments were to be made not less than annually.

As of December 1981, my San Diego residence still had not sold and I advised Mr. McKean that I would need to borrow the additional $20,000. At that time, a second promissory note dated December 28, 1981, was executed, containing the same terms as the first, except that provision for the 21 percent interest rate was deleted, substituting therefor an 18 percent rate.

In that my San Diego residence had not sold by February 1982 San Diego Federal Savings and Loan agreed on April 28, 1982, to extend the third Deed of Trust. At that time, I also obtained a fourth Deed of Trust on the San Diego residence, which was recorded on May 6, 1982, in the amount of $21,000 at 15 percent. This was a demand note due August 16, 1982, and was used to cover the monthly payments due on the San Diego and McLean homes. It should be noted that my total indebtedness was at all times exceeded by the asset value of the two houses, which totalled over $565,000.

During this entire period of time, the San Diego residence was on the market and while negotiations had been entered into with several prospective buyers, for various reasons, no sale was ever consummated. In the late summer of 1982, unbeknownst to me, Mr. Pendleton James, who was a long-time personal friend and who had previously served on the White House Staff contacted Mr. Thomas Barrack, a Californian, who was involved in the real estate and land development business, and asked if he knew of anyone who would be interested in purchasing the San Diego residence. It is my understanding that Mr. Barrack inspected the property and introduced a prospective purchaser, Mr. Irv Howard, who himself was in the real estate development business, to the property. Mr. Howard subsequently purchased the residence for $307,500. The asking price at the time of Mr. Howard's purchase was $330,000.

On September 1, 1982, the sale of my San Diego residence closed, and I retired all of the debt secured by the San Diego property.

During the summer of 1983, as you mentioned, press articles appeared suggesting that some impropriety may have been involved in the appointment of Mr. McKean to a part-time position on the U.S. Postal Service Board of Governors because of the fact that I had borrowed $60,000 from his firm. While I never considered the question of impropriety to exist, because of the notoriety of the matter, and to avoid even the appearance of impropriety, I undertook to consolidate the loans as well as the interest which had accrued on the loans. Therefore, I obtained, on September 14, 1983, an $80,000 unsecured loan from the National Bank of Commerce in Washington, D.C., to retire the obligation. The following day, on September 15, 1983, the entire $80,000 indebtedness to the firm of J.R. McKean, Accountants, was paid. I have since also negotiated a second mortgage on my McLean residence from the National Bank of Commerce to retire the $80,000 unsecured demand note. The Bank of Commerce mortgage, when finalized, and the mortgage with Washington-Lee Savings and Loan Association will aggregate approximately $226,549.41. Both loans will be secured by the McLean residence, which I estimate is valued at approximately $300,000, and will constitute my entire indebtedness. It should be noted that all loans were made in the ordinary course of business at normal rates of interest. The total interest paid during 1981-82 on the loans relating to the San Diego home amounted to $41,176.57. The interest paid on the two loans totalling $60,000 arranged through John McKean totalled approximately i.w. $23,340 from June 1981 until they were paid off in September 1983.

QUESTION NO. 2

You also asked that I describe my relationship with Mr. John R. McKean and my role in his selection and appointment to the Board of Governors of the U.S. Postal Service.

As mentioned previously, I first met Mr. McKean in June 1981 when I retained his services to assist me in a review of my projected tax and general financial situation for 1981. As you know, as Counsellor to the President, I serve as one of the members on a staff committee which reviews the recommendations of the Office of Presidential Personnel regarding candidates for various Presidential appointments. During the time in question, we were considering a large number of prospective appointees to numerous Federal posts. In the case of Mr. McKean's selection and appointment, Mr. McKean's name was suggested by another member of the committee as a highly qualified candidate for the Postal Service Board of Governors, when this subject came up in the normal discussion process. We were seeking well-qualified private sector business people who could bring to the position tested business acumen and judgment. Mr. McKean was then investigated by the Office of Presidential Personnel, who had also looked at several other candidates, and his name was ultimately submitted to the staff committee as the Personnel Office recommendation. My colleagues felt strongly that Mr. McKean possessed the necessary qualities needed for the position and was an excellent candidate. I concurred in this judgment and concurred in the recommendation that Mr. McKean's name be submitted to the President for his consideration and ultimate approval. I wish to stress, however, that at no time before or during the referral of his name to the Office of Presidential Personnel did I discuss with Mr. McKean the possibility of his appointment to this or any other Government position.

As you know, this entire matter was thoroughly investigated by the General Accounting Office at the request of Representatives William D. Ford, Robert Garcia and Mickey Leland of the House Committee on Post Office and Civil Service. On September 14, 1983, the Comptroller General provided his report to Chairman Ford. As did Representatives Ford, Garcia and Leland, I believe the report "speaks for itself" and enclose a copy for your review.

In short, Mr. McKean was recommended to the President for appointment because he supports this Administration's philosophy and because he was considered very well qualified for the position. I believe that judgment has been reinforced by his subsequent election by his peers as Chairman of the Board of Governors of the U.S. Postal Service. At no time has there been any connection between Mr. McKean's appointment and the business relationship that he has with me as my accountant.

QUESTION NO. 3

You also asked me to describe my relationship with Mr. and Mrs. Irv E. Howard; Mr. Thomas Barrack's role in the sale of my San Diego home; my relationship, if any, with Mr. Barrack and, my role in Mr. Barrack's appointment to a position at the Department of the Interior and his subsequent selection to be Assistant Secretary for Trade Development at the Department of Commerce.

Please be advised that I do not now nor have I in the past had any personal or business relationship with Mr. and Mrs. Howard other than the sale of my residence in San Diego to them. I did not know of the Howards prior to their purchase of my San Diego residence. I have never met them nor have I had any direct dealings with them.

It is my understanding that Mr. Barrack introduced Mr. Howard to the San Diego property and represented Mr. Howard in negotiations with San Diego Federal Savings and Loan for the purchase of the property. During that period of time, as mentioned above, I had absolutely no knowledge of who Mr. Howard was nor did I have any relationship with Mr. Barrack. I did, however, subsequently meet Mr. Barrack in early November in Washington, D.C., long after Mr. Howard had purchased the San Diego property. I was most appreciative of Mr. Barrack's efforts on my behalf and wished to thank him for those efforts. At that time, I was not aware that Mr. Barrack was discussing the possibility of leaving the private sector to join the Administration. I have been subsequently advised, however, that he had been approached several times by Mr. Pendleton James with offers to join the Administration. It is my further understanding that these offers were first made as early as December 1980 and were renewed in January 1981 and subsequently in February 1982. I also understand that in November 1982, Mr. Barrack was offered and accepted a Secretarial appointment at the Department of the Interior. He began work at the Department of the Interior on December 1, 1982. In February 1983, the Secretary of Commerce recommended Mr. Barrack for the position of Assistant Secretary for International Trade Development. I am also advised that while Mr. Barrack was initially approved as a prospective nominee for this position, he withdrew his name from consideration prior to the completion of the appointment clearance process to accept a position in the private sector in California. He was never nominated by the President. I had no part in suggesting or recommending Mr. Barrack for any post in the Federal Government.

The foregoing information constitutes, to the best of my knowledge and belief, all of the relevant facts and circumstances surrounding the issues which you raise. I trust they are responsive to your needs and stand ready to provide whatever additional information regarding these matters which the Committee may desire.

Sincerely,

Edwin Meese III

Edwin Meese III
Counsellor to the President

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-212647

September 14, 1983

The Honorable William D. Ford
Chairman, Committee on Post Office
and Civil Service
House of Representatives

Dear Mr. Chairman:

This responds to your letter of July 27, 1983, jointly signed by Subcommittee Chairmen Robert Garcia and Mickey Leland concerning certain financial transactions involving United States Postal Service Governor, John McKean, and two members of the White House Staff, Mr. Edwin Meese III, and Mr. Michael Deaver. The transactions occurred in 1981, the year in which Mr. McKean's name was submitted to the President to fill a vacancy on the Postal Service Board of Governors.

You requested that the General Accounting Office review the nature of these transactions, their timing in relation to Mr. McKean's nomination and the comprehensiveness and timeliness of their reporting.

In reviewing this matter, we interviewed Mr. Meese, Mr. Deaver, and Mr. McKean, as well as the President's counsel, Mr. Fielding, and Mr. Pendleton James, former Director of Presidential Personnel. We examined the Financial Disclosure Statements of the three principal parties in light of the pertinent provisions of the Ethics in Government Act, Pub. L. 95-521, as amended. The information we obtained is set forth below and is supplemented by a chronology in Attachment 1 and a list of documents reviewed in Attachment 2. Together with this information we are providing our analysis of the principal parties' compliance with the financial disclosure requirements of the Ethics in Government Act.

PART I - DEAVER-MCKEAN RELATIONSHIP

Mr. Deaver became acquainted with Mr. McKean in 1979 upon the recommendation of a friend. Mr. McKean immediately began serving as Mr. and Mrs. Deaver's tax advisor and continues to serve in that capacity. His firm, John R. McKean, Accountants, regularly bills and is paid for his services by the Deavers.

Purchase/Lease Transaction

Mr. Deaver terminated his association with Deaver and Hannaford, Inc., in preparation for assuming his position in the Reagan administration. As a result of this termination Mr. Deaver received a $21,000 lump-sum payment that posed an unexpectedly large income tax liability in 1981. Seeking tax planning advice, Mr. and Mrs. Deaver contacted Mr. McKean in August 1981. He suggested that the Deavers enter into a truck purchase/lease arrangement that would provide tax deductions in 1981 to help offset the $21,000 added income. Mr. and Mrs. Deaver agreed to the arrangement and Mr. McKean proceeded to work out the details.

Mr. McKean established an arrangement whereby Mrs. Deaver, under the name of CD Leasing, borrowed $58,889 from Mr. Helmut Moss to purchase a truck from Idaho Peterbilt, Inc., a truck dealer and distributor. Mr. Moss owns a 75 percent interest in Idaho Peterbilt and Mr. McKean owns 25 percent. As explained by Mr. McKean, this transaction entitled the Deavers to deduct depreciation and interest expenses and to take an investment tax credit on their 1981 joint Federal income tax return.

Under the note signed by Mrs. Deaver on October 7, 1981, the $58,889 loan is payable on demand to Mr. Moss and bears interest at the rate of 18 percent per annum. That rate was consistent with the average rate then charged by commercial banks for personal loans. Approximately $14,000 in principal and interest had been paid on the note as of December 31, 1982.

The second part of the arrangement established by Mr. McKean was a lease of the purchased truck to provide rental income sufficient to cover principal and interest payments on the loan. The lease was signed on October 7, 1981, by Mrs. Deaver and Mr. Moss, on behalf of CD Leasing as lessor and Ipelco, Inc., as lessee. Ipelco serves as the leasing entity for Idaho Peterbilt, Inc., and is 75 percent owned by Mr. Moss and 25 percent owned by Mr. McKean. The lease is for a term of 23 months and requires Ipelco to make rental payments totaling $43,699. According to Mr. McKean, the ultimate lessee is not Ipelco, but Motor West, a partnership in which he has no interest. The Deavers had received rental payments of approximately $22,000 as of December 31, 1982.

According to Mr. McKean, at least two options exist at the expiration of the lease: a new lease or sale of the truck. Mr. McKean is evaluating these alternatives and believes that either will provide proceeds sufficient to retire the Deaver loan within about 6 months.

Mr. McKean stated that this purchase and lease arrangement is a relatively routine tax shelter device, similar to ones that he and his partners have arranged for clients other than Mr. and Mrs. Deaver. No fee was charged for this service other than the regular fee charged on an hourly basis.

McKean Nomination

Mr. McKean stated that he first learned that Mr. Deaver was recommending him for a position on the Postal Service Board of Governors on July 27, 1981, when Mr. Deaver called Mr. McKean to ask if he would be willing to serve. A typed list of candidates for the position prepared by the Office of Presidential Personnel on July 13, 1981, did not include Mr. McKean's name, although his name appears on the document in handwriting. Mr. Pendleton James, Director of Presidential Personnel at the time, stated that Mr. Deaver recommended Mr. McKean for the position during a regular meeting of the "senior personnel panel" on July 31, 1981. This panel consisted of Mr. Deaver, Mr. Meese, Mr. Baker, and Mr. James. According to Mr. James, when Mr. Deaver suggested that Mr. McKean's name be submitted to the President, the other panel members agreed. While the panel ordinarily acted upon recommendations that had been processed through the Office of Presidential Personnel, we were advised that it was not unusual for a recommendation to be initiated and acted upon at a panel meeting.

Mr. McKean explained that he has never discussed the nomination with Mr. Deaver in connection with the truck purchase/lease transaction. He further stated that he had no contact with the White House after Mr. Deaver's call on July 27, 1981, until August 17, 1981, when he learned that the President intended to nominate him to the Board of Governors. Between August 17, 1981, and October 29, 1981, the usual forms and clearances were processed and on November 4, 1981, Mr. McKean was formally nominated by the President. He was confirmed by the Senate on March 8, 1982, to a term ending in 1986. Governors receive a salary of $10,000 per year plus $300 a day for not more than 30 days of meetings each year.

Mr. McKean indicated that he started thinking about a longer term on the Board of Governors around mid-summer 1982. He believed that a longer term would enhance his position, influence, and effectiveness as a member of that body. Mr. McKean stated that he raised the subject of a longer term during separate discussions with Mr. Deaver and Mr. Meese while he was in Washington for a Board of Governors meeting. Mr. McKean said he was aware that a full 9-year term would become available in December 1982 and had discussed his interest in the longer term with other members of the Board of Governors. Mr. Deaver said he recommended Mr. McKean for a full term because he believed Mr. McKean had been doing a good job. The second nomination was initiated in the latter part of 1982. The President nominated Mr. McKean to a full term on January 26, 1983, and he was confirmed by the Senate on February 24, 1983.

Deaver Financial Disclosure

Under Title II of the Ethics in Government Act, the incumbent of a position described in Section 201(f) is required to file a Financial Disclosure Report, Form 278, on or before May 15th of each year. That annual report covers not only the employee's own financial interests but the income, holdings and liabilities of his or her spouse. Mr. Deaver filed Forms 278 on May 17, 1982, and May 16, 1983. Since May 15th fell on a weekend in 1982 and 1983, both reports, filed on the first workday thereafter, were timely filed.

The Deavers' financial interests related to the truck purchase and lease transactions are properly reported on both Financial Disclosure Reports. On Schedule A of the form filed May 17, 1982, covering income and holdings for calendar year 1981, Mr. Deaver reported receiving rental income of between $2,500 and $5,000 from the "lease of personal property, vis., one new Peterbilt Tractor," and reported the tractor as an asset held for the production of income having a value of between $50,001 and $100,000 based on its price at the date of purchase. Purchase of the tractor in October 1981 was listed on Schedule B of the Form 278. The liability on the note, shown as payable to "Helmut Moss, c/o Idaho Peterbilt, Inc., 6633 Federal Way, Boise, Idaho 83705" was properly reported on Schedule D. That liability was shown as within the category of amount from $50,001 to $100,000 and was described as follows:

> "Approx. 18.0%, demand note, anticipated amortization period to be less than 48 mos, funded by proceeds from tractor lease 1981."

The tractor, lease and note were shown as financial interests of Mrs. Deaver.

On Schedule A of the Form 278 filed on May 16, 1983, covering calendar year 1982, Mr. Deaver accurately reported

Mrs. Deaver's receipt of rental income of between $15,000 and $50,000 attributable to a "Peterbilt Tractor" having an asset value of between $50,001 and $100,000. Mr. Deaver reported the note owed to Helmut Moss as a liability under Schedule D. It is reported in essentially the same manner as for the prior year, except for an indication that the amortization period is anticipated to be 60 rather than 48 months.

PART II - MEESE-MCKEAN RELATIONSHIP

Mr. Meese told us that he was introduced to Mr. McKean by Mr. Deaver in late 1980 or early 1981. Mr. McKean immediately began advising Mr. and Mrs. Meese on tax and other financial matters and continues to serve as the Meeses' tax advisor. His firm regularly bills and is paid by them for his services.

Loans

Mr. McKean stated that Mr. Meese called him in early June 1981 to request a meeting. The two met on June 13, 1981, in Mr. McKean's office where Mr. Meese explained that he was facing "cash flow" problems arising from college tuition expenses for his children and his inability to sell his former residence in La Mesa, California.

Mr. McKean said that he and Mr. Meese met in McKean's office a second time on June 17, 1981. They determined at this meeting that Mr. Meese would need a total of $60,000--$40,000 initially and $20,000 at a later date. Mr. McKean wrote a $40,000 check to Mr. Meese on June 25, 1981. Mr. Meese's liability for the $40,000 was recorded in the form of a promissory note executed June 25, 1981. The note obligated Mr. and Mrs. Meese to pay the loan principal on demand to "John R. McKean, Trustee, or order." The stated interest rates on the note were 21 percent per annum from July 1 through September 30, 1981, and thereafter, the greater of Bank of America prime rate or 18 percent. Interest payments were to be made not less than annually.

Mr. McKean stated that Mr. Meese called him in December 1981 to say that he needed the additional $20,000. Mr. McKean wrote a $20,000 check to Mr. Meese on December 28, 1981. A second promissory note, dated December 28, 1981, recorded Mr. and Mrs. Meese's obligation for the $20,000. This note contained the same terms as the first note, except that provision for the 21 percent interest rate was deleted. The 18 percent rate specified in this and the earlier note was consistent with rates then charged by commercial banks for personal loans. Mr. McKean said he has not received any fee for his part in the loan transactions other than the regular fee he charged on an hourly basis.

Mr. McKean sent Mr. Meese a statement on June 4, 1982, for the interest due on the first promissory note in the amount of $3,900 for the period from July 1 to December 31, 1981. Mr. Meese made no payments on the interest due. On November 3, 1982, Mr. McKean sent Mr. Meese three separate statements for the interest due on both promissory notes through September 30, 1982. The three statements totaled $12,000 and included the $3,900 previously billed. None of the three was paid by Mr. Meese.

Mr. Meese explained that he initially planned to repay the two promissory notes with the proceeds from the sale of his La Mesa, California, house but was unable to sell that house as quickly as he had hoped. The house was on the market for about 20 months before being sold in September 1982, and then yielded Mr. Meese far less than originally anticipated.

Mr. and Mrs. Meese signed two new promissory notes on November 9, 1982, to succeed the original notes. As with the original notes, the new notes were in the amounts of $40,000 and $20,000 and carried the same terms except for fixing the interest rate on both at 18 percent per annum with no reference to the prime rate. As of June 30, 1983, Mr. Meese had made no payments on the new notes. Mr. McKean's firm sent Mr. Meese a statement on June 10, 1983, showing total accrued interest of $20,100 as of June 30, 1983, on the original and substitute notes.

In early June 1983 Mr. Meese and Mr. McKean took steps toward consolidating the principal and accrued interest obligations as a secured indebtedness. Mr. and Mrs. Meese met with Mr. McKean in his office on August 20, 1983, at which time Mr. Meese paid $100 of accrued interest. At that meeting Mr. and Mrs. Meese signed an application for a loan of $60,000 from a commercial lender to be secured by a second deed of trust on their McLean, Virginia, residence. Mr. McKean stated that he expects to learn within 60 days whether the Meeses' loan application is approved. He believes the Meeses will be able to begin making regular payments on this obligation now that Mrs. Meese is employed.

One of Mr. McKean's partners told us that the funds used to provide the Meese loans came from an investment pool which the partner established and manages for clients. He said he had established similar investment pools in the past, normally consisting of pension funds that clients wish to invest for maximum return. The investment pool from which the Meese loans were made was established in May 1981 with $100,000 of clients' funds. Two clients initially provided that fund amount.

Mr. McKean's partner said the initial purpose in establishing this pool was to purchase office furniture for the McKean accounting firm and to make other office improvements. He stated that in May 1981 the firm borrowed $40,000 from the pool for these purposes, and in June 1981 arranged two other loans from the pool--one being a loan to Mr. Meese for $40,000 and the other a loan to another client for $20,000. Thus, as of July 1, 1981, the entire $100,000 of investment pool funds had been loaned. In late December 1981 the other client repaid his $20,000 loan and this sum was then used to make the $20,000 loan to Mr. Meese on December 28, 1981. The partner said the McKean firm repaid its $40,000 loan in September 1982, leaving the two Meese loans totaling $60,000 as the only loans still outstanding. At that point the $60,000 was provided by a single lender.

Mr. McKean stated that he considered arranging the Meese loans through commercial banks but did not do so because investment pool money was readily available as long as he could assure the clients a good return on their investment. Mr. McKean's partner assured us that the Meese loans were not unusual, estimating that he has arranged similar loans for perhaps 12 other clients in recent years.

Mr. McKean's partner stated that he did not initially inform the pool investors that Mr. Meese was a borrower but he has since done so. Mr. McKean and his partner disclosed the identities of the lenders to us on a confidential basis and assured us that they conduct no business with the Federal Government. Mr. McKean's partner stated, and Mr. Meese confirmed, that Mr. Meese does not know the identity of the lenders. The partner pointed out that in loan transactions such as this he does not disclose the names of the lenders to the borrower because he sees no reason for doing so.

Mr. McKean's partner also said that the client providing the funds for the Meese loans at this time has not demanded payment of interest or principal. The partner explained that this client has sufficient retirement income and, for tax purposes, would prefer to defer interest income from the Meese loans until another tax year. He said that this client is satisfied as long as interest continues to accrue and the borrower is a good credit risk.

McKean Nomination

Mr. Meese stated that he first learned of Mr. McKean's candidacy for the Board of Governors position when Mr. Deaver suggested Mr. McKean's name at a meeting of the "senior personnel panel" in July of 1981. As to Mr. McKean's nomination to a longer term on the Board, Mr. Meese said that he did not initiate that recommendation but participated in the senior personnel panel meeting when it was discussed and approved for forwarding to the President.

Mr. Meese stated that there is no connection between the loans and Mr. McKean's nominations to the Board of Governors. He and Mr. McKean both stated that they have never discussed Mr. McKean's appointments in connection with the personal financial transactions involved.

Meese Financial Disclosure

Under Schedule D of Form 278, incumbents filing the Financial Disclosure Report due May 15 of each year are required to identify and give the category of amount of liabilities owed to any creditor which exceeded $10,000 at any time during the preceding calendar year, unless that liability falls within one of the exceptions noted in Section 202(a)(4) of the Ethics in Government Act. The two original demand notes for $40,000 and $20,000 payable by their terms to "John R. McKean, Trustee, or order" are not within any of the statutory exceptions and are shown as "Liabilities" under Schedule D of the Financial Disclosure Reports filed by Mr. Meese on May 17, 1982, and May 16, 1983, covering calendar years 1981 and 1982, respectively. Since May 15 fell on a weekend in 1982 and 1983, both reports, filed the next workday, were timely filed.

On both Forms 278 Mr. Meese reported the "Name and Address of Creditor" as "J. R. McKean, One California Street, San Francisco, California" and indicated that each of the two notes was for an amount between $15,001 and $50,000. In the block for reporting the "Type of Liability," including the date, interest rate and terms, Mr. Meese gave the following description of his liabilities under the two notes:

> "Promissory Note (7/81), the higher of 18% or prime at Bank America; interest payable annually; principal on demand.
>
> "Promissory Note (12/81) terms same as above."

The category of amount is properly indicated for each note. But for a technical discrepancy in failing to note the 21 percent rate of interest payable for the first 3 months under the note for $40,000 and to indicate the substitution of notes executed in November 1982, Mr. Meese described the type of liability in the manner contemplated by the instructions accompanying the Form 278.

As designated ethics official for the White House, Mr. Fielding has determined that there is a technical error in Mr. Meese's failure to indicate that Mr. McKean is the creditor in his capacity as trustee. We have been advised that Mr. Meese intends to amend the two forms to show "McKean, Trustee" in the space for reporting the name of the creditor.

Even with the technical correction contemplated a question remains whether Mr. Meese's failure to identify the actual lenders rather than the trustee meets the requirement of Section 202(a)(4) of the Ethics in Government Act that:

> "Sec 202. (a) Each report filed pursuant to section 201(d) shall include a full and complete statement with respect to the following:
>
> * * * * *
>
> "(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceed $10,000 at any time during the preceding calendar year * * *."

This particular question is not addressed in the regulations at 5 C.F.R. Part 734 or the instructions accompanying the Form 278.

There is legislative history interpreting the similarly stated liabilities disclosure provision of S. 555 as passed by the Senate, which indicates that an employee may not interpose a trustee to avoid disclosing the identity of the person to whom the liability is actually owed. The following statement appears in the Senate Report to accompany S. 555:

> "* * * The identity of a personal liability owed should include the name of the person or corporation to which the liability is owed. If the liability is nominally placed in the name of a fiduciary or agent of the reporting individual, that liability and the identity of the person to whom it is owed must be reported. * * *". S. Rep. No. 170, 95th Cong., 1st Sess. 119 (1977).

While statements made by Congresswoman Schroeder at 124 Cong. Rec. 30,421 regarding the House version of S. 555 suggest that an employee need report the identity of the actual creditor only "if known," her remarks appear to reflect the more specific language contained in an earlier bill tailored to meet her expressed concern that commercial loans may be discounted in the ordinary course of business to other than the original lender without the employee's knowledge. See 124 Cong. Rec. 9,359 and 11,278 (1978).

In this case we have been assured that Mr. Meese does not know the identity of the lenders. His inability to disclose their identity raises a question whether Government employees may "blind" their liabilities by interposing a trustee into the debtor-creditor relationship. Section 202(f) of the Ethics in Government Act exempts from disclosure the assets of a blind trust meeting the requirements set forth at length in that section. There is no similar provision for "blinding" liabilities. This issue is discussed more fully in Attachment 3.

The fact that Mr. Meese did not pay the $7,500 in interest due July 1, 1982, on the $40,000 note he signed a year earlier raises an additional question concerning Schedule C of the Financial Disclosure Report he filed on May 16, 1983. Under Section 202(a)(2)(B) of the Ethics in Government Act, an incumbent filing an annual report is required to report the identity of the source, a brief description, and the value of all gifts not otherwise excepted aggregating $100 or more in value received from any source during the preceding calendar year. With exceptions not relevant here, Section 209 of the Act defines a gift as follows:

> "(3) 'gift' means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor * * *." (Emphasis added.)

The term "forbearance"--the act by which a creditor waits for payment of a debt after it becomes due--describes Mr. McKean's indulgence in not enforcing the creditors' right to the immediate payment of interest due July 1, 1982, in the amount of $7,500. His forbearance had the effect of giving Mr. Meese the use of $7,500 for the remaining 6 months of 1982. Since Mr. Meese did not give consideration of equal or greater value, the Ethics in Government Act would appear to require him to report that forbearance as a gift under Schedule C of the Form 278 filed on May 16, 1983. While this matter is discussed more fully in Attachment 4, Mr. Meese probably was unaware of the particular reporting requirement since the instructions accompanying the Form 278 rephrase the statutory definition of "gift" by omitting, without explanation, the word "forbearance."

The issues raised by Mr. Meese's failure to disclose the identity of the lenders and his failure to report their forbearance should be dealt with in the regulations issued by the Office of Government Ethics or, if necessary, by clarifying legislation.

PART III - MCKEAN'S FINANCIAL DISCLOSURE

Under section 201(h) of the Ethics in Government Act, a nominee who is not reasonably expected to perform the duties of his position for more than 60 days in a calendar year is exempt from the requirement to file the public financial disclosure report otherwise required by Section 201(b) of the Act. In a letter dated September 24, 1980, the Director of the Office of Government Ethics advised the General Counsel of the Postal Service that, because they serve for less than 60 days, Governors of the Postal Service Board of Governors are not required to file a Form 278 for public disclosure under the Ethics in Government Act.

Section 201(b) specifically provides that nothing in the Ethics in Government Act shall prevent any congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee. Pursuant to that authority, the Committee on Governmental Affairs asked Mr. McKean to complete the Form 278 and respond to specific questions regarding his financial interests. While neither is publicly available, the Committee has furnished copies of both to this Office.

Mr. McKean reported his income from and his interest in "John R. McKean, Accountants, a Professional Corporation," but he was not obliged to identify individual clients except those from whom he received compensation in excess of $5,000 in any of the two preceding years. Thus, he was not required to disclose his client relationship with either Mr. Deaver or Mr. Meese. He also reported his 25 percent interest in Idaho Peterbilt, Inc., and specified his interest in "related leasing entities" affiliated with the dealership. Mr. McKean was not a party to the loan between Helmut Moss and Carolyn Deaver, d.b.a. CD Leasing, and thus he was not required to make disclosure with respect to that arrangement.

A fee one receives as trustee is required to be reported as earned income under Schedule A of Form 278. There is, however, nothing in the Ethics in Government Act, the implementing regulations or the instructions accompanying Form 278 addressing a reporting individual's obligation to disclose specific interests he holds as trustee or in a fiduciary capacity. We have been advised that the Office of Government Ethics routinely informs agencies and individuals that a trustee is required to disclose financial interests held in trust only if he has a beneficial interest in the trust. Since Mr. McKean did not receive a specific fee for acting as trustee and since he had no beneficial interest in the notes signed by Mr. and Mrs. Meese, he was not required to disclose the trust relationship or to report either note as a property interest or asset.

As a matter separate and apart from the disclosure required on the Form 278, Mr. McKean was specifically asked by the Senate Committee on Governmental Affairs to describe his fiduciary responsibilities. On November 17, 1981, Mr. McKean signed a statement entitled "Biographical and Financial Information Requested of Nominees Submitted to United States Senate Governmental Affairs Committee." In the second section of that document Mr. McKean was asked for a "description of any fiduciary responsibility or power of attorney held for or on behalf of any other person." In response to that question Mr. McKean stated that in the normal course of his practice as a Certified Public Accountant he holds powers of attorney to represent certain clients on matters involving the Internal Revenue Service. Although the first loan to Mr. and Mrs. Meese had been made at the time he prepared the statement, there is no mention of the fact that he served as trustee on behalf of the individuals who provided the funds loaned to Mr. Meese or that he otherwise acted in a fiduciary capacity in the normal course of his practice. Mr. McKean stated that he did not report this relationship because he had been focusing on his interests as of December 31, 1980, in preparing the statement.

ATTACHMENT 2

Copies of Documents We Obtained

From White House Counsel

Financial Disclosure Reports, Form 278, filed by Deaver and Meese covering calendar years 1981 and 1982.

From Senate Governmental Affairs Committee

Financial Disclosure Report, Form 278, and Biographical and Financial Information submitted by McKean to Senate Governmental Affairs Committee in connection with nomination.

From John R. McKean

Initial promissory notes dated June 30 and December 28, 1981, recording Mr. and Mrs. Meese's obligation for the $40,000 and $20,000 loans.

Successor promissory notes dated November 9, 1982, recording Mr. and Mrs. Meese's obligation for the $60,000 in loans.

Statements, one dated June 4, 1982, and two dated November 3, 1982, showing accrued interest due on the $40,000 promissory note.

Statement dated November 3, 1982, showing accrued interest due on the $20,000 promissory note.

Checks, dated June 25 and December 28, 1981, in the amounts of $40,000 and $20,000 to Meese from McKean.

Letter, dated June 10, 1983, from McKean's partner to Meese requesting legal description of Meese's McLean, Virginia, residence for purpose of securing a second deed of trust.

Attachments to June 10, 1983 letter consisting of a draft of a new $80,000 note and a worksheet showing total interest accrued on the Meese loans as of June 30, 1983.

Letter, dated August 10, 1983, to McKean from financial institution specifying the terms offered for an $60,000 loan secured by a second deed of trust.

Schedule showing additions to and disbursements from investment pool from which Meese loans were made.

Chronology of events after Meese loans were granted.

Equipment lease between Ipelco, Inc., and Motor West.

Copies of Documents We Reviewed but did not Obtain

At White House Counsel's Office

Equipment lease, dated October 7, 1981, between CD Leasing and Ipelco, Inc.

Demand note, dated October 7, 1981, recording obligation for $58,889 loan to Carolyn Deaver from Helmut Moss.

Inspection contract, dated October 7, 1981, between CD Leasing and Helmut Moss providing for monthly and annual inspections of truck.

Contract of sale between Carolyn Deaver and Helmut Moss.

At John R. McKean's Office

Escrow on Mr. and Mrs. Meese's La Mesa, California, house.

Check in the amount of $40,000 paid back to investment pool by John R. McKean, Accountants.

ATTACHMENT 3

Disclosure of Liabilities Under the Ethics in Government Act

Mr. Meese was required to report his liabilities on Schedule D of the Financial Disclosure Reports, Form 278, he filed in May of 1982 and 1983. In the space provided for "Name and Address of Creditor" Mr. Meese listed "J. R. McKean," notwithstanding that the demand notes in question are payable to "John R. McKean, Trustee." Even if the report is corrected to indicate Mr. McKean's capacity as trustee, there remains a question whether listing a trustee as creditor complies with the disclosure requirements of the Ethics in Government Act, Pub. L. 95-521, as amended. Section 202 of that Act provides:

> "(a) Each report filed pursuant to section 201(d) shall include a full and complete statement with respect to the following:
>
> * * * * *
>
> "(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceed $10,000 at any time during the preceding calendar year, excluding * * *."

Neither the implementing regulations at 5 C.F.R. Part 734 nor the instructions accompanying the Form 278 address this "trustee" question. Furthermore, while there is legislative history from the Senate suggesting that an employee may not, by interposing a fiduciary, avoid disclosing the identity of his creditor, there is history from the House to the contrary, suggesting that the indentity of the lender need be disclosed only "if known."

The language of Section 202(a)(4) emerged from conference as an amalgam of differing language contained in Senate and House bills. The liabilities disclosure provisions of the two bills differed most significantly in that the Senate version contained fewer exclusions. The following explanation is excerpted from the Conference Report accompanying S. 555, which became Pub. L. 95-521:

> "The Senate bill required reporting of liabilities owed over $2,500 to any source other than a relative at any time during the calendar year. The House required disclosure of liabilities of over $5,000 as of the close of the calendar year to any source other than a relative, except for certain mortgages on a personal residence, and a loan secured by a personal motor vehicle or household furniture or appliances. The Senate receded to the House with an amendment changing the threshold to $10,000 but covering loans held at any time during the calendar year." H.R. Rep. No. 1756, 95th Cong., 2d Sess. 67 (1978).

Senate Bill S. 555 sent to conference required the reporting individual to disclose:

> "(f) The identity and category of value of each personal liability owed, directly or indirectly, other than to a relative, which

> exceeds $2,500 at any time during such calendar year." 123 Cong. Rec. 21,014 (1977).

The following explanation of that language is excerpted from the Senate Report accompanying S. 555:

> "Subsection (f) of section 302 requires the listing of the identity and category of value of each liability owed directly or indirectly, which exceeds $2,500 at any time during the calendar year covered by the financial disclosure report. Excluded from this requirement, however, are loans which are advanced to a reporting individual from a relative (as defined in section 308(14)). This requires the listing of all loans over $2,500, whether secured or not, and regardless of the repayment terms or interest rates. The identity of a personal liability owed should include the name of the person or corporation to which the liability is owed. If the liability is nominally placed in the name of a fiduciary or agent of the reporting individual, that liability and the identity of the person to whom it is owed to must be reported * * *." S. Rep. No. 170, 95th Cong., 1st Sess. 119 (1977).

S. 555 as passed by the House consisted of its own bill, H.R. 1, for which it had substituted the language of H.R. 13850. 124 Cong. Rec. 30,406, 30,414 32,028 (1978). Section 202(a)(4), the liabilities reporting requirement of the bill passed by the House, would have required disclosing:

> "(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceeds $5,000 as of the close of the preceding calendar year, excluding--
>
> "(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and
>
> "(B) any loan secured by a personal motor vehicle or household furniture or appliances." 124 Cong. Rec. 32,023 (1978).

Congressman Danielson explained that H.R. 13850 represented a compromise of language contained in three other House bills: H.R. 7401 reported by the Select Committee on Ethics; H.R. 1 reported by the Committee on the Judiciary; and H.R. 6954 reported by the Post Office and Civil Service Committee and the Armed Services Committee. 124 Cong. Rec. 30,414 (1978). As to that compromise bill, Congresswoman Schroeder offered a "summary of the intentions of this part" that she characterized as being "for the benefit of my colleagues, and those who will be faced with interpretations of the language of title II, Part A." 124 Cong. Rec. 30,419 (1978). Her summary contains the following explanation of the liabilities disclosure provision passed by the House:

> "Paragraph (4) of section 202(a)(4) requires the reporting of a description of liabilities owed during the calendar year and the identity of the persons to whom such liabilities are owed (if known). The exact amount of the liabilities is not required to

> be reported, only the category of value."
> 124 Cong. Rec. 30,421 (1978).

Congresswoman Schroeder's statement that the creditor need be disclosed only "if known" is derived from explicit language to that effect contained in a prior bill she had offered on April 10, 1976, as a joint substitute to H.R. 1. That substitute would have required:

> "A description of any liability owed during the reporting period and the identity of the person to whom such liability is owed (if known). Reporting is not required under this paragraph with respect to * * *."
> 124 Cong. Rec. 9,359 (1978).

Congresswoman Schroeder offered the following explanation of the liabilities reporting requirement of that joint substitute:

> "Moreover, one has to know, under H.R. 1, the person whom the money is owed to actually is. A person who, for example, borrows on a stock brokerage account cannot easily trace to whom he is actually in debt. All he knows is that he pays back the broker. The same goes with many automobile loans, personal loans, mortgage loans, or small business loans, which may be discounted to other firms although collected by the original holder. Consequently, under H.R. 1 a person could have 100 outstanding $3,499 'loans' from a person he regulates and never report any while a person who reported a General Motors Acceptance Corporation auto loan which actually had been discounted to the Bank of America would be misfiling. The joint substitute would not permit such an absurdity to occur." 124 Cong. Rec. 11,278 (1978).

The joint substitute sponsored by Congresswoman Schroeder was not adopted and the "if known" language she had urged did not survive the compromise that became H.R. 13850. Against this background, her remarks concerning the liabilities reporting requirement passed by the House probably should be given the cautionary treatment suggested in *Harold* v. *United States*, 634 F.2d 547 (1980).

It may, as a practical matter, be possible to reconcile Congresswoman Schroeder's concern with the ordinary commercial practice of discounting loans and the Senate's concern that the disclosure requirements not be circumvented by the "nominal" placement of a liability in the name of a fiduciary. "Nominal" in this context must be given the meaning "existing in name only," suggesting that the Senate's concern was with the situation in which a fiduciary is interjected in the debtor-creditor relationship to avoid disclosure of the actual creditor or to shield the real parties in interest from conflict of interest problems such as those of self-dealing proscribed by 18 U.S.C. 208 (1976). This is consistent with the fact that the Ethics in Government Act, which makes express provision at Section 202(f) for blinding assets, has no corollary provision for blinding liabilities. It seems clear that the Senate was not concerned with routine commercial loans discounted to a firm unknown to the borrower. This is a matter that should be dealt with in the regulations or instructions issued by the Office of Government Ethics or, if necessary, by clarifying legislation.

ATTACHMENT 4

Disclosure of Forbearance Under the Ethics in Government Act

The notes executed by Mr. and Mrs. Meese on June 25 and December 28, 1981, as well as the substitute notes executed on November 9, 1982, provide that "payments of interest are to be made not less than annually at the rates recited herein." During calendar year 1982, Mr. Meese failed to pay $7,500 in interest due July 1, 1982, under the $40,000 note and, as of August 25, 1983, had paid only $100 of the interest due under both the original and substitute notes. Mr. McKean has not enforced the creditors' rights to periodic payment of interest earned, but instead has merely issued statements to Mr. and Mrs. Meese reflecting its accrual. As of August 25, 1983, that accrued but unpaid interest totaled $20,000.

During the reporting year 1982, therefore, Mr. McKean's forbearance had the practical effect of granting Mr. Meese the use of $7,500 for the final 6 months of that year. This raises the question whether Mr. Meese should have reported Mr. McKean's forbearance on Schedule C of the Financial Disclosure Report, Form 278, he filed May 16, 1983. Section 202(a)(2)(B) of the Ethics in Government Act requires a full and complete statement with respect to:

> "(B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating $100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph."

With exceptions not relevant to this discussion, Section 209 of the Act defines a gift as follows:

> "(3) 'gift' means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include * * *."

This definition is restated in the implementing regulations at 5 C.F.R. 734.105(f) (1982).

Though differing in terms of the exclusions stated, the Senate and House bills sent to conference both defined the term "gift" to include "forbearance * * * or any thing of value unless consideration of equal or greater value is received." 123 Cong. Rec. 21,017 (1977) and 124 Cong. Rec. 32,024 (1978). This portion of the definition is derived from Senate and House rules restricting the receipt of gifts from any party with an interest in legislation before the Congress. Senate Rule XXXV, S. Doc. 2, 97th Cong., 1st Sess. 271 (1981) and House Rule XLIII, clause 4, H. Doc. 398, 96th Cong., 2d Sess. 634 (1980) as interpreted in Advisory Opinion No. 7 issued by the Select Committee on Ethics, 123 Cong. Rec. 15,450 (1977).

"Forbearance" is defined in Black's Law Dictionary as an act by which a creditor waits for payment of a debt after it becomes due--an indulgence granted a debtor. It is the extension or granting of further time for the repayment of an obligation, and has this meaning in applying the usury laws and in determining whether an agreement is supported by consideration. *Buck* v. *Dahlgren*, 100 Cal. Rptr. 462, 466 (1972); *Shell Oil Co*. v. *Livingston Fertilizer & Chemical Co., Inc*., 513 P.2d 861,863 (1973); *Doyle* v. *Northrup Corp*., 455 F. Supp. 1318 (1978). It carries the same meaning in a number of Federal statutes in addition to the Ethics in Government Act. See, e.g., 12 U.S.C. 2709, 2710 (1976) involving emergency mortgage relief, 20 U.S.C. 1080(c) (Supp. IV 1980) involving student loans, and 38 U.S.C. 1816(a), 1820(f) (1976) involving Veterans Administration guaranteed loans.

As noted by the Supreme Court, forbearance or the suspension of an existing demand may be of considerable value to a debtor:

> "* * * When the settlement was made, the new notes were given in payment of the prior indebtedness, and the collaterals previously held were surrendered to the defendant, and the time of payment was extended and definitively fixed by the terms of the notes, showing an agreement to give time for the payment of a debt already over-due, and a forbearance to enforce remedies for its recovery; and the implication is very strong, that the delay secured by the arrangement constituted the principal inducement to the transfer of the bill. Such a suspension of an existing demand is frequently of the utmost importance to a debtor, and it constitutes one of the oldest titles of the law under the head of forbearance, and has always been considered a sufficient and valid consideration." *Goodman* v. *Simonds*, 61 U.S. 343, 370 (1857).

S. 555 reported by the Senate would have excepted from the definition of "gift" any loan made in a "commercially reasonable manner (including requirements that the loan be repaid and that a reasonable rate of interest be paid)." Although the exception for commercially reasonable loans was not part of the definition enacted, the following discussion of that exclusionary language is an indication of how the value of interest "forgone" is to be determined for purposes of financial disclosure:

> "Thus, a loan made to a reporting individual which required repayment but did not require the payment of interest would be a reportable gift (if received from anyone other than a relative). It is the interest foregone on the loan which is the measure of the amount of the gift. Thus, if interest on such a loan at the lowest publicly available rate for such a loan would exceed $100 in the year covered by the financial disclosure report, the interest on the loan must be reported under subsection (c) of section 302." S. Rep. No. 170, 95th Cong., 1st Sess. 114 (1977).

As opposed to interest totally "forgone," however, interest "forborne" is simply deferred for a period of time. The creditor has forborne only his legal rights to exact timely payment, and thus the measure of the gift is not the interest itself but its value to the parties over that period of time. It would appear reasonable to determine the value of Mr. McKean's forbearance by considering the earnings value of that sum for the period forborne. From the creditors' perspective, it may be said that Mr. McKean as trustee gave up the earnings value of $7,500 for 6 months. In terms of value to Mr. Meese, it either permitted him to earn interest on or otherwise use $7,500 for 6 months, or it relieved him of the necessity to borrow $7,500 to satisfy that indebtedness when due. Whichever way it might be valued, however, the interest forborne by Mr. McKean had value in excess of $100. Since it does not appear that consideration of equal or greater value was given by Mr. Meese, this forbearance should have been reported on Schedule C of the Form 278 filed on May 16, 1983.

It is entirely likely that Mr. Meese was not on notice of the requirement to include forbearance as a reportable gift on his 1982 Financial Disclosure Report. The instructions accompanying the Form 278 restate the statutory definition of the word "gift" deleting the word "forbearance" with no explanation for doing so. That deletion would appear to be inadvertent in view of the fact that the financial disclosure regulations at 5 C.F.R. 734.105(f) faithfully incorporate the statutory definition.

The CHAIRMAN. Did Mr. McKean ever advise you as to who the investor was of the $60,000?

Mr. MEESE. No, he did not, Mr. Chairman. Mr. McKean indicated that he had a pool of funds that was administered by his accounting firm. He did not indicate to me who the investors were. He always acted as trustee and I did not know the source of this loan money, nor do I know the source of it now. To my knowledge, I have never heard of the source, and I do not know it today.

Let me also say that the General Accounting Office, as you mentioned, did, in fact, investigate this entire matter. Their report indicates no connection between the appointment and the loans and, in effect, provides the same chronicle of information, the chronology that you have recited and I have reiterated and that is contained in my letter to you, which has been made available to the entire committee.

The CHAIRMAN. Now, without objection, I will introduce for the record a letter I received from Mr. McKean, including a chronology of Mr. McKean's relationship with Mr. Meese. The chronology sets forth Mr. McKean's meetings with Meese in June 1981; the arrangement and repayment of the two loans on behalf of Mr. Meese, including supporting documents, as well as the information relating to Mr. McKean's appointment to the Board of Governors of the U.S. Postal Service.

[Aforementioned material follows:]

JOHN R. MCKEAN C.P.A.
SIMON S. TENG C.P.A.

JOHN R. MCKEAN, ACCOUNTANTS
A PROFESSIONAL CORPORATION
ONE CALIFORNIA STREET, SUITE 1200
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE 788-2400

CLIFFORD KUPPERBERG C.P.A.
TERENCE A. CALLAGHAN C.P.A.

February 27, 1984

Honorable Strom Thurmond
Chairman
Senate Judiciary Committee
Dirksen Building
Washington, D.C. 20510

Dear Senator Thurmond:

At the request of your chief investigator, Duke Short, I am enclosing a chronology of my relationship with Edwin Meese, who is a client of my accounting firm.

The chronology includes my meeting with Mr. Meese in June 1981, my arrangements of two loans on behalf of Mr. Meese and Mr. Meese's repayment of the loans. The chronology also includes information relating to my appointment to the Board of Governors of the United States Postal Service.

I hope this information fully meets the Committee's needs.

Please advise if I can assist you further.

Very truly yours,

John R McKean

John R. McKean

JMCK:ps

Enclosure

February 27, 1984

Chronology

6/13/81	Edwin and Ursula Meese met with John R. McKean, in McKean's San Francisco office (John R. McKean, Accountants) seeking financial advice. They had been referred to McKean by Michael Deaver. The Meeses discussed financial planning in view of their move to Washington, their children's tuition costs, and the fact that they had not yet sold their California home.
6/17/81	Meese 1/ met with McKean a second time. McKean had prepared a financial projection for the Meeses indicating they would need $40,000 in cash for immediate expenses and $20,000 at the end of the year. There was discussion of the possibility of obtaining a loan from some of McKean's other accounting clients, and the Meeses decided to borrow $40,000. Meese informed McKean that he expected to be able to repay the loan within six months, upon the sale of his California home. (McKean's accounting firm had arranged loans for clients on several other occasions.)
6/25/81- 6/30/81	Edwin and Ursula Meese obtained a loan in the amount of $40,000 through McKean. Interest on the loan was 21 percent through September 30, 1981 and the higher of 18 percent or the prime rate thereafter. (Check and copy of promissory note are at Attachment 1.) McKean informed Meese that the source of this money was a client of his accounting firm, but did not inform Meese of the specific identity of the source. So far as McKean knows, Meese still does not know the identity of the source. The source of the money was Abe Kupperberg, a pharmacist and the father of Clifford Kupperberg, a partner in McKean's accounting firm.2/ Abe Kupperberg is not a government contractor and has no connection, other than these transactions, with Edwin or Ursula Meese. He had agreed to make $60,000 available to his son, Clifford, as part of an investment pool for lending purposes. He provided the funds to

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1/ "Meese" used alone refers to Edwin Meese.

2/ The identity of the source of these funds, Abe Kupperberg, is provided in confidence, with the request that the Committee not disclose this information publicly.

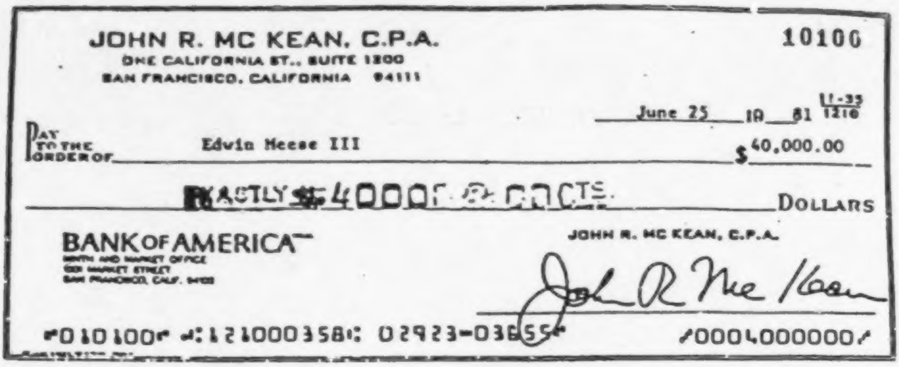
	McKean's accounting firm through Alba Trading, a company owned by his son. Abe Kupperberg was not aware of the identity of the borrowers of these funds until the summer of 1983, when stories relating to the loan were published in the press.
7/27/81	McKean received a telephone call from Michael Deaver, who asked if McKean would be interested in an appointment to the Board of Governors of the United States Postal Service. This was the first suggestion of any kind of a government appointment for McKean and came as a complete surprise to McKean.
8/4/81	McKean's office sent McKean's biographical data and resume to the White House.
8/17/81	McKean did not hear anything more on the nomination until this date, when he was telephoned by a White House staff member and told that he was to be nominated to the Postal Service Board of Governors.
8/19/81	McKean's office sent to the White House additional personal data in connection with the nomination.
9/3/81	McKean submitted disclosure form to the White House.
11/4/81	President Reagan submitted McKean's nomination to the Senate to fill a vacancy for the remainder of an unexpired term of one of the Governors of the U.S. Postal Service, expiring 12/8/86.
12/28/81	Edwin and Ursula Meese obtained a second loan through McKean, in the amount of $20,000, at an interest rate of 18 percent or the prime rate, whichever was higher. (Check and copy of promissory note are at Attachment 2.) Again the source of the money was Abe Kupperberg. Again McKean did not disclose the source of the funds to the Meeses.3/

3/ The 9/14/83 GAO Report states that two lenders contributed to the investment fund out of which the Meese loan was made. A second source, another firm client, contributed $40,000 to the fund. This money was borrowed by McKean's accounting firm itself. The $60,000 borrowed by the Meeses is attributable to the funds provided by Abe Kupperberg.

3/2/82	The Senate Committee on Government Affairs held its hearing on McKean's nomination.
3/8/82	The Senate confirmed McKean's nomination.
6/4/82	McKean sent Meese a bill in the amount of $3,900 for the interest due on the $40,000 note, covering the period 7/1/81 through 12/31/81. (Attachment 3.) By the terms of the note signed by the Meeses on 6/30/81, this interest was due on 6/30/82. However, Clifford Kupperberg, who was managing the loan funds on behalf of his father, did not press for interest payments. Clifford Kupperberg was aware of the identity of the borrowers, and believed that they were creditworthy and that the principal and interest would be paid. He also thought that the 18 percent interest rate on the loan adequately compensated for the delay in the interest payment and that postponing the interest income to another year would have favorable tax consequences for Abe Kupperberg. Finally, on 7/22/82, the Meeses' son was killed in an automobile accident, and neither McKean nor Kupperberg wished to pursue the matter of the interest payment at the time of that tragic event.
9/1/82	Meese sold his California home, but received only a small sum in cash, which was not enough to pay the loans arranged by McKean. (McKean was not involved in the sale of the home and did not learn of it until 11/9/82, when Meese informed him of the sale.)
11/3/82	McKean sent Meese three bills totaling $12,000 for the interest on both notes through 9/30/82, including the unpaid interest previously billed on 6/4/82. (Attachment 4.)
11/8/82 or 11/9/82	McKean met with Meese in Washington and gave him two new notes, dated 9/30/82, to be signed by him and his wife, to replace the earlier notes for $40,000 and $20,000. These notes differed from the earlier notes in that the rate was fixed at 18 percent, rather than the higher of 18 percent or the prime rate. (Attachment 5.)

	At this meeting, Meese informed McKean that his house had been sold but the sale had not produced enough cash to repay the loans. McKean and Meese then agreed that accrued interest would be added to the $60,000 principal of the loans and rolled over into a new interest bearing note to be secured by the Meeses' Virginia home.
1/26/83	President Reagan nominated McKean to a full 9-year term as a Governor of the Postal Service, expiring 12/8/91. Sometime prior to this, McKean had discussed the possibility of a nomination for a full term, first with Deaver and then with Meese.
2/24/83	The Senate confirmed McKean's nomination to a full term.
6/10/83	Simon Teng, another of McKean's partners, wrote to Meese, enclosing a statement of the principal and $20,100 in interest due on the two notes through 6/30/83. He also enclosed a new loan agreement in the amount of $80,000. This $80,000 covered the principal and all the interest due on the earlier notes minus $100. By the terms of the new loan agreement, the interest on the new loan was to be at 13 percent. (The prime rate on 6/10/83 was 10.5 percent.) The new loan was to be secured by a second deed of trust on the Meeses' Virginia home. (The letter, statement of principal and interest, and new loan agreement are at Attachment 6.)
8/20/83	Edwin and Ursula Meese visited McKean's office. They signed application papers for a second mortgage on their Virginia home, in the amount of $80,000, to obtain funds to repay the principal and interest on the loans. This application was to be submitted to American Home Funding of Annandale, Virginia. Meese gave McKean a check for $100.00 to cover the difference between the amount of principal and interest owed on the loan as of 6/30/83 ($80,100) and the amount of the loan for which the Meeses were then applying ($80,000).
9/13/83	Meese called McKean and said he had obtained a loan from another source and did not need the American Home Funding loan. He said he would be sending $80,000 to McKean immediately.

9/15/83	McKean received from Meese a National Bank of Commerce cashier's check, dated 9/14/83, for $80,000. Together with the 8/20/83 check for $100.00, this covered the principal and interest on the loans through June 30, 1983. The same day, McKean paid $80,100 to Clifford Kupperberg, via a check to Alba Trading. Kupperberg in turn paid this amount to his father, Abe Kupperberg. (The three checks are at Attachment 7.) McKean also wrote to American Home Funding withdrawing the Meeses' loan application.
9/16/83	McKean sent Meese a letter acknowledging receipt of the $80,000 check and confirming that principal and interest through 6/30/83 had been paid. He enclosed a bill for $2,250 in additional interest through 9/15/83. (Attachment 8.)
Approximately 2/14/84	Meese called McKean and told him he would shortly be paying the outstanding interest, plus interest on the interest.
2/24/84	McKean received a check for $3,340.12 from Meese, with a letter stating that the check was to cover interest for the period 7/1/83 through 9/15/83, plus interest on the interest through 2/22/84. (Attachment 9.)
2/27/84	McKean paid $3,430.12 to Clifford Kuperberg, via a check to Alba Trading. Kupperberg in turn paid this amount to his father, Abe Kupperberg. (The two checks are at Attachment 10.)



JOHN R. MC KEAN, C.P.A.
ONE CALIFORNIA ST., SUITE 1300
SAN FRANCISCO, CALIFORNIA 94111

10100

June 25 19 81 $\frac{11-35}{1210}$

PAY TO THE ORDER OF Edwin Meese III $40,000.00

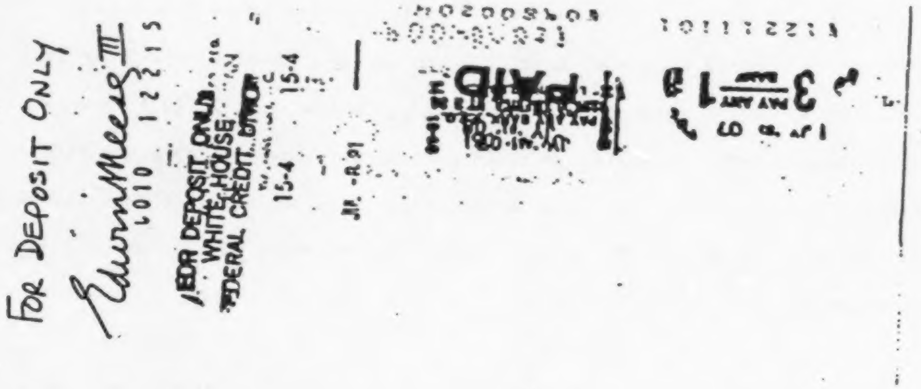
EXACTLY $40000 & 00 CTS. DOLLARS

BANK OF AMERICA
NINTH AND MARKET OFFICE
1000 MARKET STREET
SAN FRANCISCO, CALIF. 94103

JOHN R. MC KEAN, C.P.A.

John R Mc Kean

⑈010100⑈ ⑆121000358⑆ 02923-03655⑈ ⑈0004000000⑈



FOR DEPOSIT ONLY

Edwin Meese III

6010 12215

FOR DEPOSIT ONLY
WHITE HOUSE
FEDERAL CREDIT UNION

15-4

15-4

JL -8 81

PAID

June 30, 1981

PROMISSORY NOTE #1

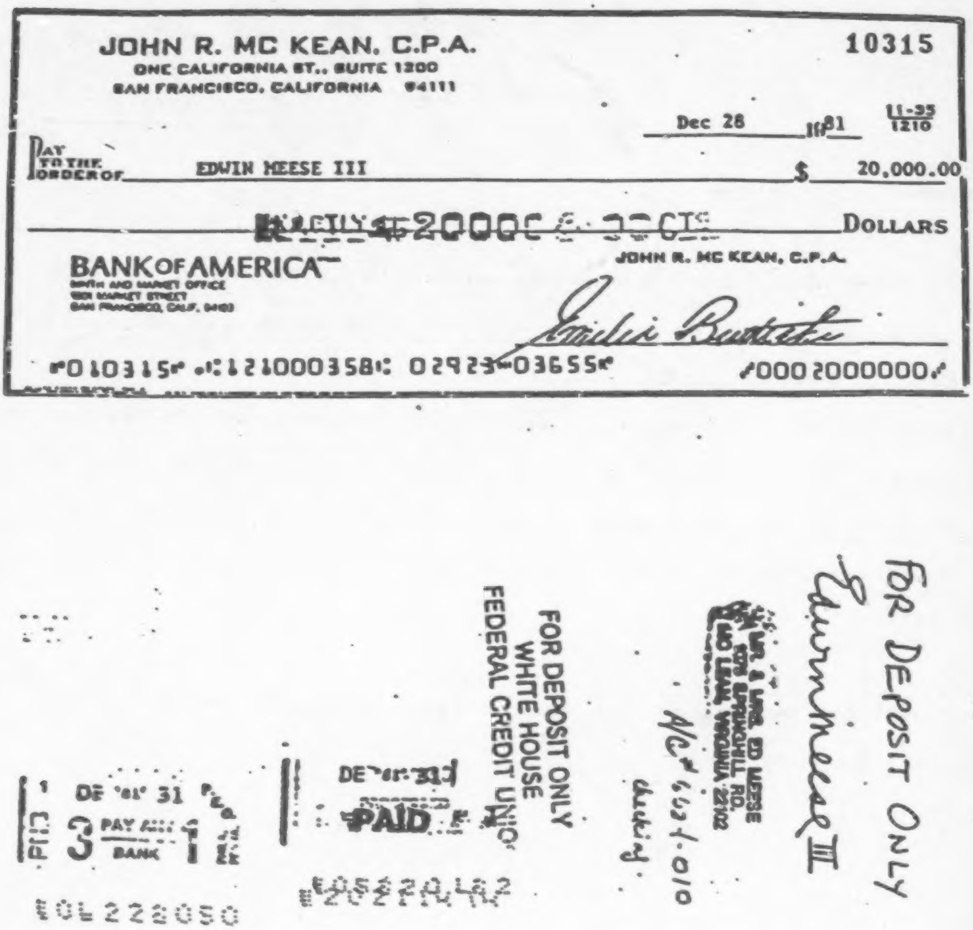
Amount: $40,000

We, EDWIN MEESE III AND URSULA MEESE, on demand after date for value received jointly and severally promise to pay to JOHN R. McKEAN, Trustee, or order, at San Francisco, California the sum of FORTY THOUSAND DOLLARS in lawful money of the United States of America, with interest thereon payable in like lawful money at the rate of 21 percent per annum from July 1, 1981 through September 30, 1981; thereafter, (a) 18 percent per annum or (b) prime rate (Bank of America, San Francisco) determined at the beginning of each calendar quarter (July 1, October 1, January 1, April 1) whichever of (a) or (b) is the greater.

Payments of interest are to be made not less than annually at the rate (s) recited herein.

EDWIN MEESE III

URSULA MEESE



JOHN R. MC KEAN, C.P.A.
ONE CALIFORNIA ST., SUITE 1200
SAN FRANCISCO, CALIFORNIA 94111

10315

Dec 28 19 81

11-35
1210

PAY TO THE ORDER OF EDWIN MEESE III $ 20,000.00

EXACTLY $20000 & 00CTS DOLLARS

BANK OF AMERICA
NINTH AND MARKET OFFICE
1501 MARKET STREET
SAN FRANCISCO, CALIF. 94103

JOHN R. MC KEAN, C.P.A.

Emilie Bautista

⑈010315⑈ ⑆121000358⑆ 02923⑉03655⑈ ⑈0002000000⑈

FOR DEPOSIT ONLY
Edwin Meese III

MR. & MRS. ED MEESE
1075 SPRINGHILL RD.
MC LEAN, VIRGINIA 22102

A/C# 6634-010
checking.

FOR DEPOSIT ONLY
WHITE HOUSE
FEDERAL CREDIT UNION

DE '81 31
PAID

DE '81 31
PAY ANY BANK

December 28, 1981

PROMISSORY NOTE # 2

Amount: $20,000

We, EDWIN MEESE III AND URSULA MEESE, on demand after date for value received jointly and severally promise to pay to JOHN R. McKEAN, Trustee, or order, at San Francisco, California the sum of TWENTY THOUSAND DOLLARS in lawful money of the United States of America, with interest thereon payable in like lawful money at the rate of (a) 18 percent per annum or (b) prime rate (Bank of America, San Francisco) determined at the beginning of each calendar quarter (July 1, October 1, January 1, April 1) whichever of (a) or (b) is the greater.

Payments of interest are to be made not less than annually at the rate (s) recited herein.

EDWIN MEESE III

URSULA MEESE

DATE

DATE

JOHN R. McKEAN C.P.A.
[illegible] C.P.A.

JOHN R. McKEAN, ACCOUNTANTS
A PROFESSIONAL CORPORATION
ONE CALIFORNIA STREET, SUITE [illegible]
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE [illegible]

[illegible] C.P.A.
TERENCE J. CALLAGHAN C.P.A.

June 4,1982

Edwin Meese III
1075 Spring Hill Road
MacLean, VA 22101

To bill you for interest on Promissory Note # 1 as computed below through the period December 31,1981.

(1) July, 1981 thru September 30, 1981	
(a) $40,000 @ 21% = $8,400	
(b) For 90 days (25% of $8,400)	$ 2,100
(2) October 1, 1981 thru December 31, 1981	
(a) $40,000 @ 18% = $7,200	
(b) For 90 days (25% of $7,200)	1,800
	$ 3,900

Please make check payable to
John R. McKean Trustee

John R. McKean C.P.A.
[illegible] C.P.A.

John R. McKean, Accountants
A Professional Corporation
One California Street Suite [illegible]
San Francisco, California [illegible]
Telephone [illegible]

Clifford [illegible] C.P.A.
Terence J. Callaghan C.P.A.

November 3, 1952

Edwin Meese, III
1075 Spring Hill Road
MacLean, VA 22101

To bill you for interest on Promissory Note # 1 - $40,000 as computed below:

7/1/81 - 9/30/81	-	21%	($700/mo. x 3)	2,100
10/1/81 - 12/31/81	-	18%	($600/mo. x 3)	1,800
				$3,900

John R. McKean C.P.A.
[illegible] C.P.A.

JOHN R. McKEAN, ACCOUNTANTS
A PROFESSIONAL CORPORATION
ONE CALIFORNIA STREET SUITE [illegible]
SAN FRANCISCO, CALIFORNIA [illegible]
TELEPHONE [illegible]

[illegible] C.P.A.
Terence J. Callaghan C.P.A.

November 3, 1982

Edwin Meese, III
1075 Spring Hill Road
MacLean, VA 22101

To bill you for interest on Promissory Note # 1 - $40,000 as computed below:

1/1/82 - 9/30/82 - 18% ($600/mo. x 9) $5,400

[illegible] C.P.A.
[illegible] C.P.A.

JOHN R. MCKEAN, ACCOUNTANTS
A PROFESSIONAL CORPORATION
ONE CALIFORNIA STREET, SUITE [illegible]
SAN FRANCISCO, CALIFORNIA [illegible]
TELEPHONE [illegible]

[illegible] C.P.A.
TERENCE J. CALLAGHAN C.P.A.

November 3, 1982

Edwin Meese, III
1075 Spring Hill Road
MacLean, VA 22101

To bill you for interest on Promissory Note # 2 - $20,000 as computed below:

1/1/82 - 9/30/82 - 18% ($300/mo. x 9) $2,700

September 30, 1982

Amount: $40,000

We, EDWIN MEESE III AND URSULA MEESE, on demand after date for value received jointly and severally promise to pay to JOHN R. McKEAN, Trustee, or order, at San Francisco, California the sum of FORTY THOUSAND DOLLARS in lawful money of the United States of America, with interest thereon payable in like lawful money at the rate of 18 percent per annum.

Payments of interest are to be made not less than annually at the rate(s) recited herein.

Edwin Meese III
EDWIN MEESE III

URSULA MEESE

9 Nov 82
DATE

[illegible] Nov 82
DATE

September 30, 1982

PROMISSORY NOTE #2

Amount: $20,000

We, EDWIN MEESE III AND URSULA MEESE, on demand after date of value received jointly and severally promise to pay to JOHN H. McKEAN, Trustee, or order, at San Francisco, California the sum of TWENTY THOUSAND DOLLARS in lawful money of the United States of America, with interest thereon payable in like lawful money at the rate of 18 percent per annum.

Payments of interest are to be made not less than annually at the rate(s) recited herein.

Edwin Meese III
EDWIN MEESE III

Ursula Meese
URSULA MEESE

[illegible]
DATE

[illegible]
DATE

JOHN R. MCKEAN, ACCOUNTANTS
A PROFESSIONAL CORPORATION
ONE CALIFORNIA STREET, SUITE [illegible]
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE [illegible]

JOHN R. MCKEAN C.P.A.
SIMON S. TENG C.P.A.

CLIFFORD [illegible] C.P.A.
TERENCE J. CALLAGHAN C.P.A.

June 10, 1983

Mr. Edwin Meese
1075 Spring Hill Road
Mc Lean, VA 22101

Dear Ed:

In accordance with the terms of the notes dated September 30, 1982, I have brought the interest accrued up to date (see Attachment I attached). In order to reduce the interest cost, I have arranged to have the note secured by a second Deed of Trust on your home (see Attachment II attached). In order to have the Deed of Trust recorded, I will need the legal description of your home. Please provide me with the escrow document and copy of the Deed of Trust on the first mortgage and I will be able to take care of the rest.

Very truly yours,

Simon Teng

ST:dkn

Attachments

Prepared By / Approved By 7/10/83

EDWIN MEESE III

	(1)	(2)	(3)	(4)	(5)	(6)
1) NOTE DATED 9/30/82				40000 -		
2) NOTE DATED 9/30/82				20000		
3) INTEREST ACCUMULATED 7/1/81 – 9/30/82				12000 -		
4) INTEREST ACCRUED - 10/1/82 - 6/30/83 (9 mos @ $900)				8100 -		
5) TOTAL AMT DUE AT 6/30/83 $				80100 -		
6). NOTE TO BE REWRITTEN $				80000		

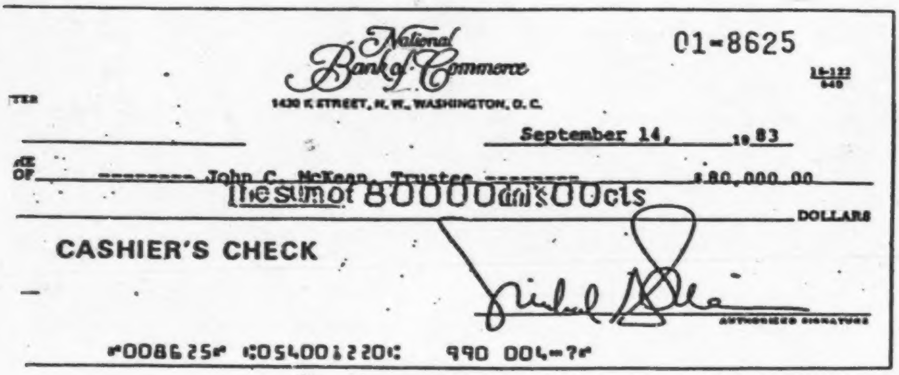
Amount: $80,000

We, EDWIN MEESE III AND URSULA MEESE, on demand after date of value received jointly and severally promise to pay to ________________, or order, at San Francisco, California the sum of EIGHTY THOUSAND DOLLARS in lawful money of the United States of America, with interest thereon payable in like lawful money at the rate of 13 percent per annum (13%), interest only to be paid monthly beginning August 1, 1984 and first day of each month thereafter until principal and interest are paid in full.

This note is secured by a Deed of Trust bearing even date herewith.

EDWIN MEESE III	URSULA MEESE
DATE	DATE

Bank of America



National Bank of Commerce
1430 K STREET, N.W., WASHINGTON, D.C.

01-8625

15-122/540

TER

September 14, 19 83

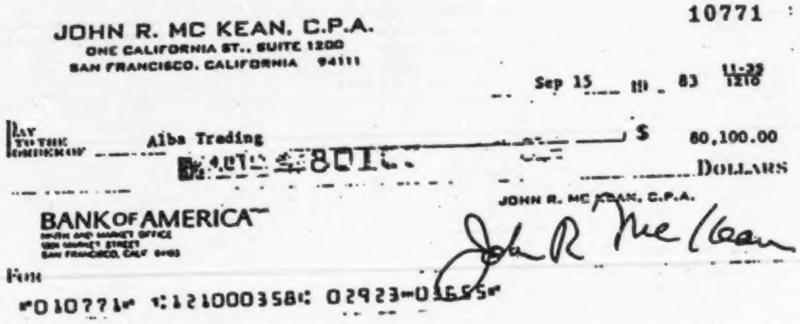
AE OF ---------- John C. McKean, Trustee ---------- $80,000.00

The sum of 80000 dlls 00 cts DOLLARS

CASHIER'S CHECK

AUTHORIZED SIGNATURE

⑈008625⑈ ⑆054001220⑆ 990 004-7⑈



10771

JOHN R. MC KEAN, C.P.A.
ONE CALIFORNIA ST., SUITE 1200
SAN FRANCISCO, CALIFORNIA 94111

Sep 15 19 83 11-35/1210

PAY TO THE ORDER OF Alba Trading $ 80,100.00

DOLLARS

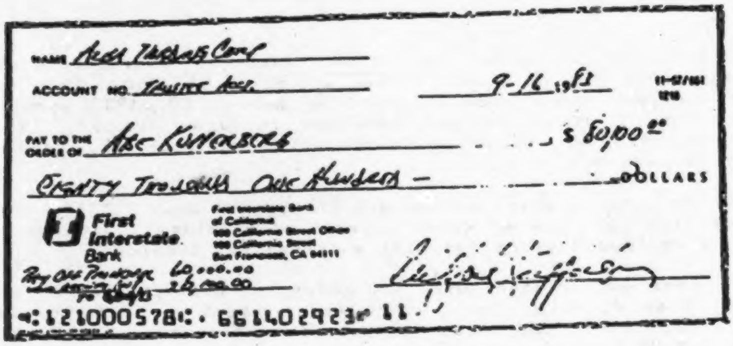
BANK OF AMERICA

JOHN R. MC KEAN, C.P.A.

John R McKean

FOR

010771 121000358 02923-03655



NAME Alba Trading Corp

ACCOUNT NO. Trust Acc.

9-16 1983 11-57/1210

PAY TO THE ORDER OF ABC Kuttenberg $ 80,100.00

Eighty Thousand One Hundred — DOLLARS

First Interstate Bank

Pay One Thousand 60,000.00
20,100.00

121000578 · 661402923 11

[illegible] R. MCKEAN C.P.A.
[illegible] S. TENG C.P.A.

JOHN R. MCKEAN, ACCOUNTANTS
A PROFESSIONAL CORPORATION
ONE CALIFORNIA STREET, SUITE 1000
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE [illegible]

CLIFFORD [illegible] C.P.A.
TERENCE J. CALLAGHAN C.P.A.

September 16, 1983

Mr. Edwin Meese, III
1075 Spring Hill Road
McLean, VA 22101

Dear Ed:

We received on September 15, 1983, National Bank of Commerce Cashier's Check Number 1-8625 in the amount of $80,000. This amount plus a previous remittance received on August 20, 1983, completes the payment of principal and interest through June 30, 1983 in accordance with our worksheet calculation of June 10, 1983 previously forwarded to you.

All that remains is interest due for the period July 1, 1983 through and including the date of final payment of principal, September 15, 1983. We enclose invoice for that supplemental interest.

Per telephone conversation with you today, we will proceed to notify American Home Funding, Inc., the lender which we had previously applied to, that the loan transaction has been successfully concluded from a different source.

Thank you for your assistance in this regard.

Very truly yours,

John R McK.

John R. McKean

RMc:dkn

nclosure

[illegible] C.P.A.
[illegible] C.P.A.

JOHN R. MCKEAN, ACCOUNTANTS
A PROFESSIONAL CORPORATION
ONE CALIFORNIA STREET, SUITE [illegible]
SAN FRANCISCO, CALIFORNIA [illegible]
TELEPHONE [illegible]

[illegible] C.P.A.
TERENCE A. CALLAGHAN C.P.A.

September 16, 1983

Edwin Meese, III
1075 Spring Hill Road
McLean, VA 22101

To bill you for interest on Promissory Note # 1 - $40,000

To bill you for interest on Promissory Note # 2 - $20,000

For the period 6/30/83 to 9/15/83 $2,250

Please make check payable to John R.McKean Trustee

1075 Spring Hill Road
McLean, Virginia 22102
22 February 1984

Mr. John R. McKean, CPA
One California Street, Suite 1200
San Francisco, California 94111

Dear John,

Pursuant to our telephone conversation, I am enclosing my check in the amount of $3,340.12, which is for the remaining interest payments on the loans which you arranged, as trustee, for me during 1981. As we discussed, this payment is being made in 1984 so as to realize the most beneficial tax treatment of the interest payments.

The above amount is calculated as described below and refers to the interest on the loan of $40,000 arranged by you on 25 June 1981 (hereinafter known as "Loan 1") and the loan of $20,000 arranged on 28 December 1981 (hereinafter known as "Loan 2"):

Interest due on Loans 1 & 2 for the period from 1 July 83 until they were paid in full on 15 Sept 83	$2250.00
Interest on $7500 unpaid interest on Loan 1 for the period 1 Jan 83 through 30 June 83	380.00
Interest on $3500 unpaid interest on Loan 2 for the period 1 Jan 83 through 30 June 83	190.00
Interest on $20,100 unpaid interest on Loans 1 & 2 for the period 1 July 83 through 15 Sept 83	422.00
Interest on $2250 unpaid interest on Loans 1 & 2 for the period 16 Sept 83 through 22 Feb 84	98.12
Total	$3340.12

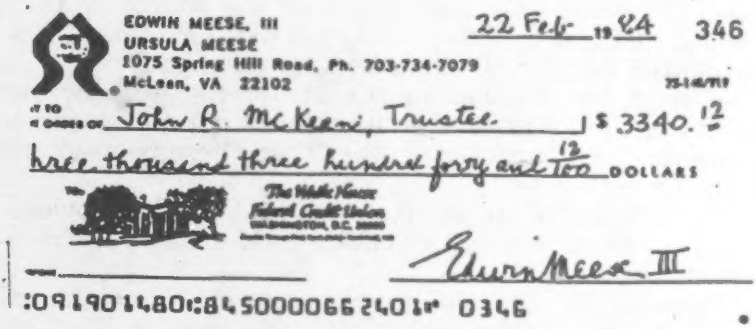
This will complete all payments of principal and interest on Loans 1 and 2, described above. I appreciate your assistance in these matters.

Sincerely yours,

Ed

Edwin Meese III

Enclosure: WHFCU check #346 ($3340.12)



EDWIN MEESE, III
URSULA MEESE
1075 Spring Hill Road, Ph. 703-734-7079
McLean, VA 22102

22 Feb 19 84 346

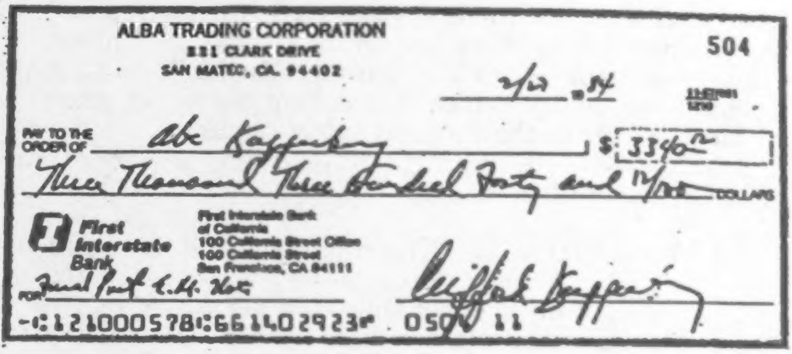
PAY TO THE ORDER OF John R. McKean, Trustee. $ 3340.12

hree thousand three hundred forty and 12/100 DOLLARS

The White House Federal Credit Union
WASHINGTON, D.C.

Edwin Meese III

⑆091901480⑆845000066240⑈ 0346



ALBA TRADING CORPORATION
221 CLARK DRIVE
SAN MATEO, CA. 94402

504

2/27 19 84

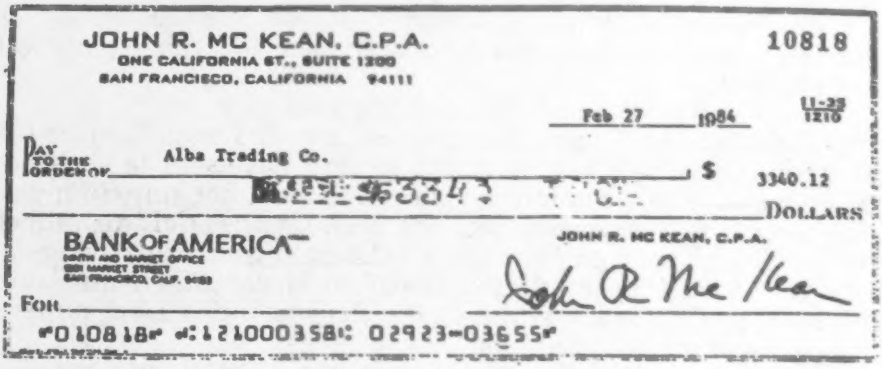
PAY TO THE ORDER OF Abe Kappenberg $ 3340 12

Three Thousand Three Hundred Forty and 12/100 DOLLARS

First Interstate Bank
First Interstate Bank of California
100 California Street Office
100 California Street
San Francisco, CA 94111

FOR Final Pmt E.M. Note

⑆121000578⑆661402923⑈ 050[illegible] 11



JOHN R. MC KEAN, C.P.A.
ONE CALIFORNIA ST., SUITE 1300
SAN FRANCISCO, CALIFORNIA 94111

10818

Feb 27 1984

11-35/1210

PAY TO THE ORDER OF Alba Trading Co. $ 3340.12

[illegible] DOLLARS

BANK OF AMERICA
NINTH AND MARKET OFFICE
1301 MARKET STREET
SAN FRANCISCO, CALIF. 94103

JOHN R. MC KEAN, C.P.A.

John R. McKean

FOR

⑈010818⑈ ⑆121000358⑆ 02923-03655⑈

The **Chairman**. The chronology also reflects that, as Mr. Meese has stated, McKean only told him that the source of the money was a client of his accounting firm, but did not inform him of the specific identity of the individual lending the money.

And so far as Mr. McKean knows, Mr. Meese still does not know the identity of the investor. The investor is not a Government contractor and has no connections, other than these transactions, with Mr. or Ms. Meese.

Now, the identity of the source of the funds was provided to me in confidence. Of course, each Senator so desiring will have access to this information.

Mr. **Metzenbaum**. Mr. Chairman, reserving the right to object, and I have no intention of objecting, but I wonder if at this time, since the chairman has made it clear that Mr. McKean's testimony or the evidence will be very important to this committee, whether the Chair would not be willing to invite Mr. McKean to make himself available to testify before this committee so we might inquire of him directly rather than just by using his letter.

The **Chairman**. I think Mr. McKean has answered fully the questions. If the full committee wants to call him later, we will consider it.

Senator **Metzenbaum**. Mr. Chairman, I would like to request you to——

The **Chairman**. I do not feel that it is necessary in view of this.

Senator **Metzenbaum** [continuing]. Invite him to appear. I do have a number of questions that I would like to ask of him.

The **Chairman**. Well, I would like for you to review Mr. McKean's response first, Senator, and then you can let me know how you feel.

Senator **Metzenbaum**. I will. I thank you.

Mr. **Meese**. Mr. Chairman, I would ask, if I might, to add one other thing that is set forth in the letter I have sent to you and to the members of the committee, but which I did not state in my own testimony a few moments ago: the loan on the McLean property was originally secured through Washington and Lee Savings and Loan and was later purchased at par by Great American Savings and Loan in California, which is the firm to which I am presently making payments on that loan.

The **Chairman**. I believe that is set out in the chronology which you furnished to the committee, which I have furnished a copy of to all the members of the committee.

Mr. **Meese**. Yes, it is.

The **Chairman**. Mr. Meese, you sold the La Mesa residence to Irvin Howard in September 1982. Mr. Howard learned that the residence was for sale from Mr. Thomas Barrack.

Mr. Barrack was a former Deputy Under Secretary of the Department of the Interior and subsequently nominated to be Assistant Secretary for Trade Development in the Department of Commerce.

Mr. Meese, would you tell the committee your relationship with Mr. and Mrs. Howard, as well as your relationship with Mr. Thomas Barrack, and your role, if any, in the appointment of Mr. Barrack to the positions I just mentioned?

Mr. MEESE. Mr. Chairman, I did not know and do not know Mr. and Mrs. Howard, other than the fact that they are the persons who purchased our house in San Diego County. This entire transaction was handled by my attorney in San Diego. I never met Mr. Howard and have never met him. We signed the papers and mailed them back, and so I have had no other contact with Mr. Howard other than in his capacity as purchaser of the property.

Mr. Thomas Barrack and I have a mutual friend who, sometime in July, I believe, or at least during the summer of 1982, mentioned to him that we were trying to sell our house in San Diego, inasmuch as Mr. Barrack was at that time in the real estate and land development business.

And this friend asked him if he might know of anyone who might be interested or if he would be interested in purchasing the property himself. Mr. Barrack then, later on in August, did find Mr. Howard, who was interested in purchasing the property. I believe Mr. Howard and his sons were planning to open up some developments in San Diego County, and so Mr. Howard was interested in purchasing the house.

That sale was ultimately completed, I believe, in early September 1982, or late August. At that time, I had not met Mr. Barrack. I had talked with him a few times on the telephone. I later met him. We became friends, however at no time did I know he was interested in Government Service until after he had been selected by the Secretary of the Interior as, I believe, a deputy under secretary in that Department.

Some time later, Mr. Barrack was selected by the Secretary of Commerce to be an Assistant Secretary of Commerce in the trade area. I had no participation in either of those selection processes. The only role I had was, again, as a member of the staff review committee when that name passed through us on the way to the President some time later.

But as far as suggesting, recommending or making the actual selection of Mr. Barrack for any position, I had no role.

The CHAIRMAN. Without objection, I will now submit for the record a letter I received from Mr. Thomas Barrack of California concerning his role in the sale of the La Mesa property to Mr. Howard.

[Letter follows:]

THOMAS J. BARRACK, JR.
800 S. REFUGIO ROAD
SANTA YNEZ, CALIFORNIA 93460
(805) 688-8884

February 18, 1984

Duke Short, Esquire
Chief Investigator
United States Senate Judiciary Committee
Dirksen Senate Office Building
Washington D.C., 20510

Dear Mr. Short,

The following declaration is a clarification of specific questions which you have raised with regard to my involvement in the sale of the Edwin Meese III residence in La Mesa California to I.E. Howard.

1. WHEN DID I FIRST LEARN THAT THE MEESE HOUSE WAS FOR SALE AND FROM WHOM DID I LEARN IT?

I first learned that the Meese house was for sale on or about July 16, 1982. I learned of the opportunity from E. Pendelton James, a close personal friend.

2. DID I INTRODUCE I.E. HOWARD TO THE MEESE HOUSE OPPORTUNITY?

Yes, I introduced Irv Howard to the purchase opportunity in early August of 1982. The Howards subsequently purchased the home in September of 1982.

3. WHAT WAS THE NATURE OF MY OBLIGATION TO HOWCO CONSTRUCTION COMPANY WHICH WAS DISCHARGED IN JANUARY OF 1983?

In December of 1980 I acquired an investment property in Los Angeles, California (Holmby Hills) that required substantial renovation. In December of 1980 I hired Howco to perform the renovation. The payment made to Howco in January of 1983 was the outstanding balance for work performed on the Holmby Hills house.

On January 14, 1983 I closed the sale of the property and on the same date I paid Howco in full.

The above statements are an accurate representation of the facts to the best of my knowledge and recollection.

Sincerely,

THOMAS J. BARRACK, JR.

The CHAIRMAN. In summary, Mr. Barrack states, "I first learned that the Meese house was for sale on or about July 16, 1982. I learned of the opportunity from E. Pendleton James, a close personal friend.

"I introduced Irv Howard to the purchase opportunity in early August 1982. The Howards subsequently purchased the home in September 1982."

I would like the record to also reflect that I reviewed Mr. Barrack's financial disclosure report when he was nominated to be Assistant Secretary of Commerce for International Trade Development.

This report, dated March 1983, reflects a liability to Howco Construction Co. of California in an amount in excess of $250,000. The liability was a promissory note at 9 percent and was paid in January 1983.

Howco Construction Co. is owned by Mr. Irvin Howard. In responding to my question concerning the nature of his obligation to Howco Construction Co., Mr. Barrack stated the following:

> In December 1980 I acquired an investment property in Los Angeles, California (Holmby Hills) that required substantial renovation.
>
> In December 1980, I hired Howco to perform the renovation. The payment made to Howco in January 1983 was the outstanding balance for work performed on the Holmby Hills home. On January 14, 1983, I closed the sale of the property, and on the same date I paid Howco in full.

Now, I would like the record to reflect, also, that I contacted Mr. Irvin Howard concerning his purchase of the La Mesa property.

Senator METZENBAUM. Well, Mr. Chairman, in connection——

The CHAIRMAN. Mr. Howard informed me——

Senator METZENBAUM. Mr. Chairman, you had offered the letter of Mr. Barrack for the record. And, again, having the same concern and objection as I do with respect to Mr. McKean's letter, you have seen fit to indicate that all of the witnesses in this hearing are going to be sworn, and I certainly have no question about that.

But it seems to me that if we are going to offer evidence by letters and we will not have an opportunity to inquire of the person who wrote the letter, they should not become a part of the evidenciary record.

And I think that the appropriate procedure, Mr. Chairman, since these two men are very important to the hearing, is that they be invited to testify, and I am so requesting.

The CHAIRMAN. I would suggest you review the letters and I will talk to you later about whether they——

Senator METZENBAUM. I have reviewed them, Mr. Chairman.

The CHAIRMAN. Well, then, I will talk to you when I get through questioning Mr. Meese.

Senator BIDEN. Mr. Chairman, I will only take a second, I will only take a second, but I think the Senator makes a valid point. We are in a hearing here where everyone is going to be under oath and you are introducing in evidence letters that—we do not doubt at all your intention, but they do not stand the test of these men appearing under oath.

I think we can settle that later, but I think it is a valid point.

Senator HATCH. Mr. Chairman, if you would please yield.

The CHAIRMAN. The Senator from Utah.

Senator **Hatch**. Perhaps the way to resolve this problem is to ask these gentlemen to verify these statements under oath. That would probably solve the problem.

Senator **Metzenbaum**. I do not think that they would object to coming. I am objecting to the introduction of their letters at this point, and I am very happy to discuss with the chairman afterward the manner of inviting them. I am not suggesting they be subpoenaed. My guess is they would be pleased to come if invited to do so.

The **Chairman**. Senator, if you wish to invite them, we will see if we can arrange for them to be heard.

Senator **Metzenbaum**. The answer is I will, but I would prefer that the chairman do it since it is, I believe, within the prerogative of the chairman to actually extend the invitation, but I certainly would join with the chairman in extending the invitation.

The **Chairman**. Well, let me finish with Mr. Meese and we will talk later.

Now, as I stated, I would like for the record to reflect that I contacted Mr. Irvin Howard concerning his purchase of the La Mesa property. Mr. Howard informed me that he first learned that the Meese house was for sale in August 1982 from Mr. Thomas Barrack.

Mr. Howard stated:

> At the time I purchased the house, I did not know Ed Meese, had never met Ed Meese, and didn't know that Ed Meese was a prominent political figure. I purchased the house in September 1981 for $307,500.
>
> The property consisted of a house on a lot and an adjoining lot. I sold the house in the spring of 1982 for $275,000. I purchased the property with the expectation that the lot might be built on, or sold separately at some time in the future, should I desire to do so.
>
> I sold the house because my personal plans had changed. The economy had worsened, and the adjoining lot was not buildable in the near future.

Mr. Howard also stated that in regard to the money owed him by Thomas Barrack, and I quote:

> In 1982 Mr. Barrack hired Howco Construction Company to perform substantial construction work on the house which he had purchased in Holmby Hills, California. The payment Howco received in 1983 was a final payment for work on the Holmby Hills house.

Without objection, the Howard letters will be entered into the record.

Senator **Metzenbaum**. I object, Mr. Chairman, to this letter, as well as the other two, being introduced into evidence. I think Mr. Howard should be requested to appear before this committee.

The **Chairman**. Well, when we get the full committee, we will let them decide whether to enter these letters.

Mr. Meese, Mr. Arthur van Court in 1970 served as travel secretary and chief of security for then Governor Reagan and presently serves as a U.S. marshal for the eastern district of California. Would you please tell the committee your relationship with Mr. van Court and what role, if any, you played in his nomination for the position of U.S. marshal.

Mr. **Meese**. Mr. Chairman, I first met Arthur van Court in 1967 when I was appointed as legal affairs secretary to then Governor Ronald Reagan. Mr. van Court was already on board as his travel secretary and served in that capacity for approximately 2 years until around 1969, when he was appointed by the administration then as U. S. marshal for the eastern district of California.

He served in that capacity, I believe, for 8 years. I knew him, obviously, as a fellow member of the staff of the Governor at that time and I knew him socially I saw him occasionally during the ensuing period of years. More recently I served on the Judicial Selection Committee when Mr. van Court was considered as a possible candidate for appointment as the U.S. marshal for the eastern district of California.

The CHAIRMAN. Now, I have gone into detail on these matters, so that the record would be clarified, so the fact would be before the committee. And in view of the publicity that has occurred concerning Mr. Meese in these matters, some of which has been unfavorable, I felt in all fairness that the committee should get the facts. And we have tried to present objectively the facts here concerning this matter.

Now, how much time have I used—47 minutes?

I now turn to the distinguished ranking member who will have 47 minutes, the same as I had.

Senator BIDEN. Mr. Chairman, what I will do is not take all that 47 minutes, but I will ask that this side take the 47 minutes, and I will take some of it and in the interest of the schedules of my two colleagues who remain here, give them an opportunity to ask questions within that timeframe and then reserve the balance of my questions for the second round.

Mr. Meese, I would like to begin, if I may, by discussing with you a chronology of events relating to the *Bob Jones University* case. And I want to say at the outset the reason why I pursue this is to pursue with you what we discussed in my office, and that is the difference in the role of being the counselor to the President and being the Attorney General of the United States and to what extent there is a difference.

And I think one of the ways, best ways, for me to begin to get a sense of that is to start with a specific example, and to paraphrase the chairman, I have a relatively lengthy chronology I want to go through and you can tell me if it is inaccurate in your view.

In 1980 the Republican platform said, and I quote, "We will halt the unconstitutional and regulatory vendetta launched by Mr. Carter's IRS Commissioner against independent schools." End of quote.

And then to the best of my knowledge, on October 13, 1981, the Supreme Court decided to review the *Bob Jones* case to determine whether the policy established by the IRS in the Nixon administration denying tax exemption to private schools that practiced discrimination was unconstitutional under the first amendment when the school is religious in nature.

And on October 30, 17 days later, Representative Trent Lott of Mississippi wrote to President Reagan and I am told to other administration officials, saying that the Government's traditional position against such exemptions is, quote, "both legally and politically indefensible," end of quote, and asking the Government to change its position.

The source of this information is the Senate Finance Committee's chronology on page 2 of their chronology.

And on a date not clear, but soon thereafter, President Reagan indicated in his log next to a staff summary of the Lott letter to the effect that Lott wants the President to intervene in the case. Quote, "I think we should," end of quote. And in a subsequent press conference after the unfavorable reaction, the President acknowledged, and I quote, "I am the originator of the whole thing." Now, the source of this was a Trent Lott letter to Schmults on December 21, 1981, and a Post article on January 21.

And then again on December 8, Commissioner Edgar of the IRS argues to Secretary Regan that the IRS position should not be changed. And then on the December 15 the Treasury's General Counsel advises Secretary Regan to support Edgar, because on the nondiscrimination rule, quote, "It has been the position of the service since 1970 and has many times been upheld by the courts," end of quote.

That same day, Deputy AG Schmults responds to Lott concluding that DOJ will not change its position. And then on the 18th you, Mr. Meese, I am told, received a memo from Ken Cribb of your staff telling you that Justice and Treasury are discussing policy changes. And then sometime before the 21st someone in the White House gave Mr. Lott, Congressman Lott a copy of the President's log with the notation of his approval of Lott's position.

And on December 21, 1981, the President sent a copy of the log—or excuse me—Lott sent a copy of the log to Schmults and states, "given the explicit promise of his platform and his"—meaning the President's—"apparent intention to stand by his pledge, I do not believe that any brief should be filed which undercuts his position until he has had an opportunity to review the matter." And the source of this is Mr. Lott's letter to Mr. Schmults.

And on the 28th, you apparently called the Deputy Secretary of Treasury McNamara, and I am told you said, "Pressed me to be sure that Justice and Treasury Departments were absolutely comfortable with their position on the law before taking any action." That was your quote. And then on the 28th you approved the plan in principle for the Justice and Treasury Departments to change their position in the Supreme Court, according to a report of a Treasury spokesperson, cited by the New York Times.

And then on January 7——

Senator Kennedy. Would the Senator yield?

Senator Biden. Sure.

Senator Kennedy. I am wondering, Mr. Meese, if you could tell us if you remember the December 28 conversation and what the nature of that conversation was.

Senator Biden. Well, I would like to finish my question and maybe he can tell us whether he remembers any of this.

And then on the 8th you announced that—the administration announced that it would reserve its position in the Supreme Court and no longer deny exemptions—reverse and no longer deny exemptions to segregated private schools. On January 12 the administration changed its position and said it will deny such exemptions but only after Congress enacts legislation authorizing IRS to deny exemptions.

On the 17th, you in an interview the the Post said Schmults, on his own, had taken the lead in recommending the change in position, and quote, "I have no idea why, other than the fact that the President had campaigned on it and the Republican platform was clear."

And then on the 19th President Reagan told a new conference, "I am the source."

Now, my first question is: Can you tell us whether or not the chronology of events as I have outlined them is as you understand it?

Mr. **Meese**. Senator, what you have stated here in this chronology is not inconsistent with my general knowledge of the matter, but I do not know of all of the events that you have described. I know of those that pertain to me personally, such as the telephone conversation with the Deputy Secretary of the Treasury on December 28. That is close enough. I do remember having such a conversation with him, although the difference is that he called me rather than me calling him.

Senator **Biden**. Well, why do you not tell us, as Senator Kennedy suggested, what you recall of that conversation.

Mr **Meese**. I recall Mr. McNamara having called me about this. I think I had mentioned this earlier to Secretary Regan, and McNamara called me. What you have related there, I believe, is from his testimony before the Congress as to the transaction. I told him that both Treasury and Justice should be comfortable with their legal position, that that was the right legal position to take before they took action. That is an accurate paraphrase of my recollection of the conversation.

Senator **Biden**. How did you hear about it from Secretary Regan?

Mr. **Meese**. I did not hear about it from Secretary Reagan. I heard about it first, I believe, in the December 18 memo from Ken Cribb, who was then in the Office of Cabinet Affairs. In my position as counselor to the President, that office would normally keep me apprised of policy issues that were being considered by the various departments.

Senator **Biden**. Would you please clarify for us who originated the idea for the administration to change its position on the question denying tax exemption to schools that practiced discrimination, Congressman Lott, the President, the Deputy Attorney General or you, or who?

Mr. **Meese**. Senator, I do not know who originated it. It was not a matter from our standpoint of changing a position on denying tax exemptions to schools that discriminated. It was a matter of whether or not the Internal Revenue Service had the authority on their own, without an express grant of authority from the Congress, to impose sanctions on the basis of their interpretation of public policy.

Senator **Biden**. Well, what I do not understand is it had been policy for 10 years. So obviously, it was a change in position, at least. Do you know who originated the idea of the change in position?

Mr. **Meese**. No, sir; I do not. But the chronology you have given indicates that the letter from Trent Lott may have had something to do with it. But I do not know exactly where that originated.

Senator **Biden**. Are you telling us that the first time that you learned of the prospect of a change in position taking place was when Mr. Cribb sent you that memo?

Mr. **Meese**. That is the first time I can recall hearing anything of this concerning a specific case or any particular matter. Obviously, I heard about the concerns relating to the Internal Revenue Service at the time of the platform hearings in 1980.

Senator **Biden**. Well, do you have any idea how the personal log of the President got to Trent Lott?

Mr. **Meese**. No; I do not.

Senator **Biden**. Would you be willing to speculate? I mean, is that usual? I mean, that seems unusual. Who would have access to the President's personal log?

Mr. **Meese**. Well, the log, this is not the President's personal log, if I may clarify, Senator; this is a log of correspondence from Members of Congress, which comes to the President. He sometimes makes notations on the side and normally that log would then go back to the legislative affairs section of the White House. Copies of it might go to other staff sections that might have an action or an interest in a particular letter.

Senator **Biden**. On January 7 when you presented the question to the President, whether or not the policy should be changed, did you discuss, to your recollection, with the President or any other members of the White House staff the legal ramifications of the decision to change the policy?

Mr. **Meese**. Senator, I am somewhat constrained here as to any personal conversations with the President that were taking place at that time.

Senator **Biden**. I am not asking you what the President said to you. But I think it is well within our right and we should have an access to, in determining whether or not what—how you view your role, whether or not you said to the President of the United States when discussing this issue with him that we had better look at the legal ramifications of this. And these are the legal ramifications, as I see them or anything along those lines. Or was it just purely a political decision?

Mr. **Meese**. Well, let me try to respond so that I can be very frank with the committee and yet at the same time fulfill my obligation under the traditional reservations that have been respected by this committee and by the Congress concerning Presidential conversations; let me just say that the legal aspects of this matter had been looked into thoroughly, to the best of my knowledge, by both the Department of the Treasury and the Department of Justice by January 7.

And information concerning that was included in the presentation was generally given in the White House, including the presentation to the President.

Senator **Biden**. Had you looked into those briefs?

Mr. **Meese**. No, sir, I had not. To the extent that I participated in any discussion, it was a matter of transmitting information received from Treasury and Justice.

Senator **Biden**. So that the transmission that took place, I mean, is that a usual practice, without going into the conversations of the President. I mean, you were his counselor. I mean, would you not have reviewed the legal implications of such, what obviously would be at minimum a controversial decision?

Mr. MEESE. Not normally, Senator. I am not the White House legal counsel. But I normally would review what had been done by the Department of Justice and the other departments that were involved. This would be the normal situation, and then in the normal course of things, that would be transmitted to members of the White House staff and to the President.

Senator BIDEN. Well, let us assume that, for the sake of trying to get a bead on your view of what your role would be as Attorney General, as Attorney General of the United States, if the President asks your opinion, would you feel obliged to give him a legal briefing on what the ramifications of such a policy change would be?

Mr. MEESE. Yes, sir, I would.

Senator BIDEN. And I am sure by now you have had a chance to fully apprise yourself of the legal ramifications of such a decision. Would you advise the President to take a position that in fact would, quote, "halt the regulatory process the IRS has undertaken to deny tax exempt status to independent schools"?

Mr. MEESE. I think it would depend on the situation, Senator.

Senator BIDEN. Bob Jones.

Mr. MEESE. Let me just say I certainly would look at all the legal ramifications and as Attorney General would advise the President upon all the legal ramifications; that answer is absolutely yes. What recommendation I would make in a hypothetical case, I would not know without knowing all the facts of the case.

Senator BIDEN. Do you think the Court was legally right in the *Bob Jones* case?

Mr. MEESE. I have no quarrel with the decision the Court came to.

Senator BIDEN. Does that mean you think they were on the law correct?

Mr. MEESE. Well, up until that time, Senator, the law was obviously unsettled. Otherwise, the Supreme Court would not have been taking the case.

Senator BIDEN. Well, sometimes the law is unsettled—I mean, the Supreme Court does not take a case because everyone knows what the law is and no one challenges it. Other times they do not take a case because the law is unsettled until they declare it. I mean, it depends.

But at any rate, where we are now is assume that—let me take the case of the *Grove City College* now that was in the newspaper today and that I am sure you are aware of. Do you, as Attorney General of the United States, think that prohibition of denying Federal funding for any program or to a university for anything other than the program for which it receives Federal funding should be extended to a change in policy that would say that you could not deny funding to a university for discriminating against women's sports programs because they do not receive funding for sports programs.

Would you suggest that the *Grove City College* case be extended, the *Grove City College* case be extended to encompass that policy?

Mr. MEESE. Well, if I understand your question correctly, Senator, that is what the court ruled.

Senator BIDEN. No. The Court ruled specifically that, as I understand it, the court ruled that in the case where students are receiving financial aid, that a university is not required to sign a document that heretofore has been requested of universities, that in fact they are not involved in any discriminatory activity or process. That is how I understood the case. Now, maybe I am wrong. Maybe you can correct me.

Mr. MEESE. Well, in my understanding of the case, Senator, the court ruled that Grove City did have to sign such a document because they were receiving Federal financial assistance through the Pell Grant System, but that since the grants were to the financial aid system, that provision of the law was restricted to the institution's financial aid activities and did not permeate the entire institution.

Senator BIDEN. Right. Now, one of the questions that some of us have is whether or not you would sense many schools have been heretofore upgrading their women's athletic programs on the grounds that they thought they had to under the law or they would be denied Federal funding; since there is not Federal funding for those women's sports programs, per se, the concern now is that the Justice Department would not intervene on behalf of those who would suggest that you could not deny to women equal access to athletic opportunity and facilities.

What would be your position on that?

Mr. MEESE. I think it would have to depend based upon the law as the Supreme Court has interpreted it what Federal funding the particular institution was receiving, whether that Federal funding did apply more generally to the entire institution and whether there was a privity attacking that would enable you to proceed against the university or college because of what appeared to be discrimination in the athletic program.

Senator BIDEN. Well, again, I do not know of any women's sports programs that receive direct Federal funding.

Mr. MEESE. Well, if a direct Federal funding was applicable to the entire institution as, for example, in a comparable analogy in a high school situation where impact aid is received by a school district, then that impact aid applies to all of the activities. If you had something comparable to that in a college situation, then that would permeate the entire institution, as I understand the law.

Senator BIDEN. Do you think, shifting back to the Bob Jones situation, do you think it is appropriate that the log notation that the President was made was passed on to Congressman Lott, bearing in mind that it might be used or attempted to be used to influence the position taking by lower level administration officials?

Mr. MEESE. I don't know any of the circumstances Senator, so I really could not give you an opinion on that. It certainly appears to me to be irregular.

Senator BIDEN. What would be your position with respect to contacts by lower level officials in the Justice Department from Members of the Congress or the White House on pending cases?

Mr. MEESE. Well, on pending cases, as far as the White House is concerned, we have a very firm policy that the only contact can be through the White House counsel's office. I would think that some similar safeguards toward contacts with Members of Congress would be absolutely necessary so that there would be no improper influence on any pending case.

Senator BIDEN. Do you think it is appropriate for the President to be taking a position on a pending case?

Mr. MEESE. I think it depends on whether there are important policy considerations in that case, but I think the actual decision of the position to be taken on a pending case must remain that of the Justice Department and the Attorney General.

Senator BIDEN. I am not quite sure I understand the answer. Is it proper for the President in a pending case before the Court to be taking a position suggesting what he thinks the outcome of that case should be?

Mr. MEESE. It depends on the case, Senator. If you have a case before the Supreme Court, obviously that is a case that normally involves policy. And if a President has a policy which is either at odds with the state of the law on one side or the other of a particular controversy, then I think it is proper for that policy position to be expressed by the President to the Attorney General and for the Attorney General to consider that when he is preparing the pleadings of the Federal Government on that matter.

Senator BIDEN. Let me get to the substance of it. Do you believe that schools that discriminate on the basis of race should be tax exempt, have tax exempt status?

Mr. MEESE. Absolutely not.

Senator BIDEN. In your view, is it appropriate for the Attorney General to be advising, continuing to advise the President of the United States on political matters and campaign matters?

Mr. MEESE. No; it is not.

Senator BIDEN. With regard to the role that you may play in the upcoming campaign, there was a good deal of discussion on the issue of whether or not your job should be filled in the White House with a good, solid conservative who would just keep those whacko liberals from going out of control down there. I do not know what.

And the comment was made, and I have the quote here somewhere, but you will remember it as well as I, something to the effect by the President that I will still continue to receive the advice and counsel of Ed Meese while he is Attorney General.

What do you think the President meant by that?

Mr. MEESE. I think that he meant that as a member of the Cabinet I will continue to participate with other Cabinet members, if confirmed, in discussing with the President the wide range of policy matters that are within the province of the Cabinet. I know he did not mean political advice in the partisan sense.

Senator BIDEN. Will you be attending campaign meetings?

Mr. MEESE. No, sir; I will not. As a matter of fact, from the time of the nomination by the President, I have withdrawn from any activity of that sort.

Senator BIDEN. Will you be—would you deem it appropriate to be having discussions with Mr. Nofziger or Mr. Rollins or any of the rest of the President's cadre of political advisers and campaign staff?

Mr. MEESE. Not if those discussions were on campaign strategy and political matters of that type, no.

Senator **Biden**. What else would they talk to you about?

Mr. **Meese**. We are good friends. You mentioned Mr. Nofziger. We are good friends. We might talk on a number of matters, as we see each other at social events or otherwise, but as far as participating in the campaign process, the answer is definitely, "No."

Senator **Biden**. How would we know what you were doing? I mean, in terms of propriety. I mean, you know, Mr. Nofziger probably—I am sure we have counterparts on the Democratic side, I think it is probably not unfair to say, and he probably agrees it is a compliment; he is one of the most partisan men I have run across in my short tenure in politics of 13 years. I get the impression he lives, breathes, and sleeps politics, like many of us do. And do you think it would be proper for you to suggest that you would curtail your relationship during the campaign with him? What else does he have an interest in?

Mr. **Meese**. Well, Mr. Nofziger is a well-known raconteur on a number of subjects, Senator, and all I can say is that I do not think any individual should be constrained not to talk to someone else at a social event or something along that line.

I suspect that Mr. Nofziger will be sufficiently busy, the campaign is only one of his enterprises, that there will not be many opportunities to talk with him in the course of the next year. But I do not think one has to cut oneself off from all casual conversations with anyone who might also be involved in the political activity. But I can assure you and the members of this committee that the way in which I would conduct myself, if confirmed, would be in such a way as to make it very clear to you and to the public that there was no partisan political activity on my part.

Senator **Biden**. Is that not going to be hard? I mean, will you not be like I guess I would be, I mean, like the old fire horse. I mean, how are you going to stay out of that?

Mr. **Meese**. Senator, I am not a political fire horse to start with. I have never been involved much in political activity. The campaign of 1980 was the first one in which I had any kind of a major role. I worked as a consultant to the 1976 campaign for approximately 3 months and I was involved in a campaign for my boss for district attorney in a nonpartisan race in 1966. And those are the only campaign roles I have ever had.

Senator **Biden**. I see. So you would not characterize yourself as all that much of a political person, then, I guess?

Mr. **Meese**. No, sir. Most of my roles have been on the policy and on the governmental side rather than the political side.

Senator **Biden**. I see. I want to yield to my colleagues here, but let me ask one more question. I invested a lot of time, along with others on this committee, on both sides of the aisle in trying to work out a "compromise" on the Civil Rights Commission.

And I, for one, was of the opinion that there was less than straightforward dealing on what I thought had been a compromise. To sum it up, I thought that—as a matter of fact, I did not think—I was positive that Senators Dole, Baker, myself, and others had agreed on not only the composition of the Civil Rights Commission and its reauthorization and what form it would take, how many members, but precisely who would be those members.

I was told that you had been contacted on several occasions in Japan at a tea house or some other place, drinking tea, I might add, with the Prime Minister, whomever you were with, and that you had signed off on the details of our compromise and you might not be surprised to learn that I was somewhat shocked after having invested so much time in the process that all but the commitment made by Senator Baker and Senator Byrd and Majority Leader Wright, all but those three players in what was a five-player deal turned out to not be kept, as I had been told them.

Would you tell me and for the committee whether or not you had ever agreed—tell us the content of the extent to which you agreed with Senator Dole, with whom you were speaking, as to what the makeup of that Commission was going to be from the perspective of the President?

Mr. MEESE. Yes, sir. At no time, Senator, did Senator Dole or Senator Baker discuss any names with me, and no commitment on my part or on the part of the President through me was ever made as to any particular person being on the Civil Rights Commission, as it was reconstituted under the compromise agreement with eight people on the Commission.

Senator BIDEN. At no time—Mary Louise Smith was not mentioned to you or anyone else?

Mr. MEESE. No, sir; nor anyone else. And I believe that Senator Dole has publicly stated that.

Senator BIDEN. Is there any reason why you did not want to appoint Mary Louise Smith? I am just curious. What was wrong with her?

Mr. MEESE. Well, I think this was a matter of the President's discretion in making the appointments later on to the Commission, to provide balance on the Commission and to provide a variety of points of view. And I think this all went into his ultimate decision, not who should not be appointed but affirmatively who should be appointed.

Senator BIDEN. Did you recommend that he not appoint her? I thought he had already done that. I mean, you know——

Mr. MEESE. Well, at the time that this compromise for the reconstitution and reauthorization of the Civil Rights Commission, which was due to expire, I believe, on the 30th of September, it is my recollection now that the President at that time had already nominated three people to serve on the old Civil Rights Commission, and these candidates had not yet been confirmed by the Senate.

And so, in effect, the President had candidates already lined up.

Senator BIDEN. She was already on the Commission, though.

Mr. MEESE. She was until the Commission expired and the new Commission was formed.

Senator BIDEN. Well, I have more questions, but let me yield to Senator Kennedy.

Senator KENNEDY. Thank you very much, Senator Biden.

As you are aware, Mr. Meese, the primary concern that I had when we visited in my office about this issue is whether you can both faithfully execute and enforce the laws of this country, as the people's attorney, in a way that is going to inspire a sense of fairness and justice and equity.

And I think there are millions of Americans, even today as we have these hearings, who have serious questions and reservations as to whether you can, based upon a series of decisions or policy issues, which you have been very much involved in in the past; I think primarily in the recent times.

One of them is that millions of blacks and browns and probably women in America really wonder about your role in the *Bob Jones* decision. I think Senator Biden has outlined a series of different events. I want to get back to some of those with a somewhat different approach. There are, as I mentioned earlier, millions of Americans who are hungry and who are destitute and who are impoverished and then I hear your comments about hunger in America.

There are millions of Americans whose only recourse to equal justice under law is the legal services which are provided across this country. I wonder both about your actions out in California relevant to the California Legal Services Corporation and your own attitude toward the Legal Service Corporation. There has been a significant and dramatic attempt to undermine the congressionally mandated Legal Services Corporation, by the appointment of individuals who do not believe in that corporation and who have serious questions about its whole function.

So I am interested in the issue of fairness and equity. And as Senator Biden reviewed with you the various events of the Bob Jones chronology, I am interested in how you really viewed that first conversation that you had with Mr. McNamar and the nature of your conversation with Mr. Fielding.

There is no question, and this record should reflect that it has been 11 years of IRS policy that was disrupted and basically overturned; and that there were a series of bills that have been introduced by House Members and Senate Members to overturn that IRS policy, none of which passed the Congress or Senate of the United States.

In 1972 the Senate Select Committee on Equal Educational Opportunity recommended after very extensive hearings that "firm steps be taken to enforce that policy," so that we were not going to be subsidizing segregated schools in our Nation.

And they took note that the court's affirmance in *Coyt* v. *Green*, and I quote, "firmly establishes the legal standard for the IRS."

So, that has been the policy reaffirmed or restated by the Senate committee, which was a select committee, established in a bipartisan way to review a range of issues, but was focused also on this issue. We see the career attorneys in the Justice Department on September 19, 1981, filing the briefs, asking that certiorari be granted, but basically supporting the IRS and the IRS policy.

So you had a Department of Justice and an IRS that were supporting 11 years of established policy. You have the legislative history and the lack of ability to alter or change that particular policy. Then you have a series of letters by Mr. Lott quoting the Republican platform in terms of this particular issue, and suddenly you see a very dramatic alteration and change by the Department of Justice, which resulted in the Justice Department basically supporting the subsidization of racially discriminatory schools.

Now, that is not just a routine matter. It certainly is not routine. It certainly is not routine to millions of Americans, white, black, or brown. And as somebody who is going to try to make a decision or a determination on whether you are really going to stand for the elimination of discrimination and prejudice in this country, that has blighted this Nation over a long period of time, I am just wondering where you are going to come out on that issue.

As I gather from what you have said in response to Senator Biden about this conversation that you had on December 28th—I think the record will state it more clearly than I can remember it—you were satisfied that there was a legal case to be made for the alteration or change of that policy.

I am just wondering, when you saw that memorandum come across your desk, how you felt, because the millions of people of this country are looking to the Attorney General as a source of hope, and they really wonder whether you are going to be a source of hope in protecting those rights, or whether they are going to have a source of fear and feel that the people's lawyer is not going to stand up on this issue of the elimination of discrimination, but be looking for other memoranda or legal documents to find ways to circumvent what has been 11 years of policy for the elimination of discrimination. I am not talking here about how we are going to allocate resources, or whether there ought to be a minimum tax on corporations; we are talking here about discrimination in our society. And I am just wondering, when you reviewed that memorandum, and when you reviewed this issue later with Mr. Fielding on December 30—I believe I am right that you had a meeting—and Mr. Fielding indicated that, "Meese had no problem with this change in position," what do we say to millions of Americans who are going to wonder whether there will not be a whole other series of changes in the attempt to eliminate discrimination in our society, whether it is in education or in employment, or in housing, or in voting rights?

Mr. **Meese**. Senator, first of all, let me say that in terms of that "hope" that you speak about, I clearly stand for the elimination of discrimination and prejudice wherever it can be found, both from the standpoint of a personal commitment as well as my feeling of what the laws of the United States should be, and I will do everything in my power to carry that out as Attorney General, if I am confirmed by the Senate.

You asked about my thoughts and how I viewed those conversations and those incidents taking place then. The issue that was framed before our administration was not a matter of how to eliminate prejudice and discrimination but was the more narrow issue of whether a particular segment of the bureaucracy could impose sanctions, no matter how well motivated or how well they coincided with the belief of what the law should be, without the expressed authority from the Congress to that bureaucracy. So it was an issue, really, of the fundamental authority of Congress vis-a-vis a particular bureaucracy and to what extent a bureaucracy could set national policy on its own. That was the issue before us.

Senator **Kennedy**. Well, Mr. Meese, the fact remains that the career attorneys in the Department of Justice believed that there was sufficient authority on their first intervention before the Supreme Court. And prior to the whole series of letters quoting the Republican platform, the career attorneys on this issue believed that there was ample justification for the continuation of this policy and made that case very effectively. Then it was reversed, after the whole series of interventions that Senator Biden has mentioned—letters from Trent Lott, quotes from the Republican platform, memorandums from Assistant Attorneys General on it, that this might be an opportunity to take other action.

But the career attorneys, those who know the law and have read the law—in no way derogating your own ability as a lawyer—but they believe very clearly and very compellingly that there was that authority and indicated so.

And then, we have the whole series of interventions, quoting the platform committee, and then we see a reversal of 180 degrees. And I suppose there are a lot of people who wonder how many other times that is going to happen should Mr. Meese be confirmed as the Attorney General of the United States.

Are you going to be looking for ways of attempting to circumvent what has been, certainly, an effective policy, and clearly supported overwhelmingly, apparently, by the American people, as we have seen in terms of reaction to the alteration and change that was brought about by the administration. And I think that this is a rather basic question. Are you going to be looking for ways in which to overrule other career attorneys when it comes to trying to use the full resources of the Federal Government to try and eliminate discrimination and prejudice, or whether you are going to be looking for ways of narrowing that very important effort?

Mr. MEESE. Senator, I do not know what the career attorneys may have felt or not felt in this particular case.

Senator KENNEDY. Well, you must by now, don't you? You must have read in preparation for this hearing the Department of Justice brief that certiorari be granted on this.

Mr. MEESE. I know what the brief said at that time, but I do not know whether it represented the views of career attorneys any more or less than the views of others in the Department.

But let me say in answer to your basic——

Senator KENNEDY. Well, that is not a bad group to start with, is it?

Mr. MEESE. No. I think that——

Senator KENNEDY. Particularly under Mr. French Smith, you do not want to——

Mr. MEESE. As I mentioned earlier today, I have great respect for the men and women of that Department. But in response to your basic question, no, I do not see the desire or the opportunity to use the office to circumvent established principles of law or to change basic public policy, so long as that policy is in accordance with the law.

But in that cast there was an issue of law that was not decided. It was before the Supreme Court. And as I say, the issue before us was the ability of the Internal Revenue Service to take such action without express authority from the Congress.

Senator KENNEDY. Well, how would you rule on that today if that same memorandum had come across? How would you react today?

Mr. MEESE. I cannot answer your hypothetical question, Senator.

Senator **Kennedy**. If it had come across now, given what you know.

Mr. **Meese**. Well, today, I would answer it the same way the Court did, inasmuch as the Court has ruled on that issue.

Senator **Kennedy**. Did you know that it had been the standard for 11 years previously?

Mr. **Meese**. I believe that was included in the information that had been given to us. As a matter of fact, other information at that time revealed that, 11 years before, the career lawyers in the Justice Department had held that the IRS did not have the power, but their positions was overruled and changed by the administration in office at that time.

Senator **Kennedy**. And so it was the policy for a period of 11 years, and it had not been overruled in any other court or court decision.

The **Chairman**. The Senator's time has expired.

Senator **Kennedy**. I have been informed that my time has expired.

The **Chairman**. The distinguished Senator from Ohio has requested that certain witnesses who have submitted letters come here in person. And, Senator, in order to accommodate you in every way we can, we will invite those witnesses to come Monday morning.

Senator **Metzenbaum**. I appreciate the chairman's cooperation very much, and would ask the staff if they would be good enough to ask Mr. Howard to bring in the Howco financial dealings with Mr. Barrack and that Mr. McKean bring in all of his financial records pertaining to his dealing with Mr. Meese.

I thank the chairman very much.

The **Chairman**. The distinguished Senator from Maryland.

Senator **Mathias**. Mr. Chairman, what is your intention?

The **Chairman**. Each Senator, 15 minutes, and we will run until 1:30.

Senator **Metzenbaum**. And then, would the Chair be good enough to tell us what time he intends to reconvene?

The **Chairman**. It will probably be about 2:40.

Senator **Metzenbaum**. I thank the Chair.

CONTACT WITH WHITE HOUSE ON PENDING CASES

Senator **Mathias**. Mr. Meese, I would like to pick up on Senator Biden's question with respect to Presidential policy on pending cases.

I think I understood you to say a minute ago that on pending cases, the only contact should be through the White House counsel's office.

Mr. **Meese**. That is correct, sir.

Senator **Mathias**. Now, there was a case which involved school desegregation in Seattle in which that practice was not followed; isn't that true?

Mr. **Meese**. Well, Senator, I do not know whether that is true. Let me say that in regard to pending cases, we are talking about pending litigation of the normal type. There may be cases before the Supreme Court as we have discussed here, or even the courts of appeals where law is being made by the judicial branch in which policy matters may be involved. In the contest of such cases, a meeting might be convened involving policy people beyond the White House counsel's office to address policy matters, but the White House counsel would be present to assure that the proper legal safeguards are preserved.

Senator **Mathias**. Well, I think the *Seattle* case is useful from my point of view, to determine exactly the lawyer-client relationship that I mentioned earlier.

In August 1981—to be precise, on August 24—Lyn Nofziger sent a memorandum to you, Brad Reynolds, Ed Schmults, and William French Smith. The memo said, "I enclose for your perusal a letter to me of August 4 from Ken Eikenberry, the attorney general of the State of Washington, and a long-time Reagan worker and supporter. Not surprisingly, he, like 99.9 percent of the people who have supported Ronald Reagan in the past, is at odds with mandatory school busing, as I think we all are. Surely, if we are going to change the direction of this country, mandatory school busing is a good place to make changes, as I thought we would do, because I thought that was what the President wanted.

"I do hope we can give Mr. Eikenberry's problems a careful look."

Now, attached to that was a letter from the attorney general of the State of Washington. The background was that in the lower courts, the United States had intervened on the side of the Seattle School Board, and the letter from Attorney General Eikenberry was, to put it bluntly, a request that the United States switch sides.

I have not seen any substantive legal reasons for switching sides, but I think Mr. Nofziger, with his customary candor, put it in his memorandum what the reason was. The attorney general of Washington, Mr. Eikenberry, had asked Mr. Nofziger to "use your good offices and do whatever is possible to make sure that the decision on the U.S. Government's posture in the Supreme Court be made by staff"—these were his words—"who are sympathetic to the policies and goals of the administration of President Reagan, rather than the administration of President Carter."

Now, after this exchange of memoranda and correspondence, the Justice Department did switch sides, and the United States, which had supported the school board, supported the position of the State of Washington in the Supreme Court, although it had had the opposite position in the two lower courts.

The specific issue was whether the State could constitutionally forbid a local school board from adopting voluntarily—voluntarily—a school desegregation plan that included busing. The United States had argued that Washington could not adopt such a statute. And then we had the somewhat unusual situation in which it argued exactly the opposite in the Supreme Court.

Now, again, to delve into this whole question of relationships, could you tell us what you did after you got Mr. Nofziger's memo?

Mr. **Meese**. Senator, I have no recollection of doing anything in that particular matter or of participating in any discussions. As a matter of fact, at this point, I do not even recall receiving Mr. Nofziger's memo, although it is entirely possible that I did at that time.

Senator MATHIAS. You did not talk to any of the other people who got the memo? Did you talk to Mr. Reynolds or Mr. Schmults, or——

Mr. MEESE. Not to my recollection, no; although, again, it is possible that I may have. That was almost 3 years ago.

Senator MATHIAS. Although you may not have taken any action, we do not know what Mr. Reynolds, or Mr. Schmults, or Attorney General Smith did. So I think it is appropriate to ask, when you are ensconced in the Attorney General's Office, in those baronial surroundings, how are you going to feel about people from the White House suggesting that the Justice Department change sides somewhere in the appellate process?

Mr. MEESE. I would think, Senator, it would depend upon the situation. I think there are two issues here. One has to do with the procedural aspect, and again, I think the channel of communication through the White House counsel's office is the proper one to be observed.

This case, however, dealt with a reexamination of the policies of a previous administration, one that was dedicated to some entirely different policy positions than the current administration. The case presented two very important policy issues. One concerned the ability of a State to control matters within its own boundaries, free from intervention by the Federal courts; the other concerned the efficacy of school busing as a remedy for racial imbalance or, in some cases, segregation—I suspect it was racial imbalance in the Washington case. Thus, there were some important policy decisions to be made, which I think were properly within the province of the executive branch as a whole, including the White House, so long as the procedures for transmission of that information were properly considered.

Senator MATHIAS. Right. Now, that is exactly the point. What about the procedures? What are the ethical questions involved here?

The attorney general of the State of Washington was one of the litigants. He was a party to the case. And he approaches the party on the other side—at that time, the United States of America—through the Office of the President to bring about a change in the position of the United States. And that does not come as a result of an argument in open court; it does not come as a result of any general meeting of the parties. It comes in a memorandum which has been sent privately to the White House and forwarded by a responsible official in the White House not only to you, but to the Assistant Attorney General for Civil Rights, to the Deputy Attorney General, and to the Attorney General himself. I think this is the kind of question on which the committee really needs to be reassured.

Mr. MEESE. Well, Senator, in terms of any ethical problems, I think it is not unusual for a law office on one side of an issue to deal with a law office on the other side of the issue. I do not see an ethical problem per se in this particular matter. I think it would be important for the Attorney General and the Justice Department to look at the information that is received, just as in a public law and policy sense, you receive information from a great many people, and properly so. The attorney general in not only represents the people of Washington as a lawyer and chief legal officer but also represents a very important policy interest there concerning the authority of the State to conduct its affairs.

Senator **Mathias**. Do you think it is proper for one party in a case to solicit the other party to switch sides?

Mr. **Meese**. I think it depends on the situation, Senator. I do not see——

Senator **Mathias**. Well, everything in life depends on the situation.

Mr. **Meese**. Well, in this particular situation, assuming that the transmission of the letters was through the White House Counsel's Office rather than directly, I would see nothing wrong with the imparting of that information from the White House to the Justice Department. I do not know what happened in this particular case.

Senator **Mathias**. Well, I believe the facts are as I have described them to you.

Mr. **Meese**. Yes, but as I say, I do not know whether the Counsel's Office was the intermediary between Mr. Nofziger and those recipients in the Department of Justice.

Senator **Mathias**. Well, the letter from the attorney general of Washington was dirìcted to Mr. Franklin Nofziger, Assistant to the President for Political Affairs, and it apparently went directly from Mr. Nofziger to the Department of Justice.

And I think that some assurance on your part that that is not the route that you would countenance and permit would be helpful to this committee in considering your confirmation.

Mr. **Meese**. Well, Senator, I give you such assurance; and I believe that the procedures have been shored up since that time, so that any communications on pending cases do, in fact, go through the White House Counsel's Office.

CIVIL RIGHTS POLICIES

Senator **Mathias**. Of course, the reason that this becomes such a critical point is because of the changes that have occurred in the Department of Justice in the last 3 years, and particularly the rather dramatic changes that have taken place in the Civil Rights Division. There may be some who will welcome those changes. But to those of us who have labored in this committee on the subject of civil rights, it does seem as though the thrust of civil rights enforcement has made a drastic turn and not one for the best.

Let me be specific. We have seen for the first time, a pattern of the United States intervening in civil rights cases in order to oppose relief, to oppose remedies requested by the victims of discrimination, even, in many cases, when relief has been voluntarily negotiated between the victims of discrimination and the alleged discriminator.

We have seen the United States switching sides in midstream, as in the Seattle case. If these switches went in both directions, then there might be an argument that, well, this is a matter of policy, in which the government has simply altered direction. But in the *Bob Jones* case, we saw the United States asking the Supreme Court to appoint independent counsel to plead the cause of nondiscrimination because the United States had abandoned the cause that it had originally undertaken.

So the switches have always been in one direction.

The **Chairman**. Senator, would you excuse this interruption?

They have not always been in one direction. There have been two instances from my State in the last 6 months, one involving a county in my State in which the Justice Department——

Senator **Mathias**. Mr. Chairman, is this on your time or mine?

The **Chairman** [continuing]. On my time—in which the Justice Department entered on behalf of a minority down there and went to the Supreme Court, and the Justice Department took their side, and they prevailed; and another instance involving this State, the State reapportionment, in which the Justice Department has taken a position there, before a court here in Washington. So it has not been one way. There are two instances from my State alone in the last 6 months.

Senator **Mathias**. Well, I am glad the chairman has supplemented the record by those two instances, because what we are trying to get at here is the facts. Unfortunately, right or wrong, the perception is abroad that the Justice Department has not been fighting for civil rights as it did in some previous administrations. And even in the cases that the chairman has cited, I would note that those were not switches. Those were not cases where the Justice Department changed horses, but where the law was clear, and the Justice Department was executing the clear mandate of the law.

The **Chairman**. No, it was not clear at all. It went to the Supreme Court, one of them, and the other one is a case here in the city of Washington.

Senator **Mathias**. Well, the chairman is not claiming that the Justice Department changed sides in those cases. That was my statement, that the switches had all been——

The **Chairman**. What I understood you to say was it was all one way.

Senator **Mathias**. The switches are all one way, and I am glad to have a chance to emphasize that point. It is not that the cases are all in one direction; it is the switches that are all in one direction.

The **Chairman**. Well, in one case, it was unsettled, and it could have gone either way. Justice could have gone in on the part of the State, they could have gone in on the part of the county down there, but they took the other side in both cases.

Senator **Mathias**. Well, the point here is that a perception has been created, and Mr. Meese has an opportunity to deal with that perception and take action which, from my point of view, would be corrective.

So, I am wondering what Attorney General Meese will do with respect to victims of discrimination, whether they be blacks, Hispanics, women, handicapped Americans, or religious minorities.

What would you do differently, Mr. Meese?

Mr. **Meese**. Senator, I am not sure this is different, but I would vigorously enforce all of the civil rights laws, or see to it that they were vigorously enforced, on behalf of those people that you have mentioned.

I think at the same time, concerning your premise to that question, there are legitimate differences of opinion between this administration and the previous administration as to the best remedies, the best way to effect those remedies, and the best way vigorously to enforce the civil rights laws.

I also agree with you that there is a perception that I hope we would be able to correct, a perception that somehow the Civil Rights Division is not doing what the American people expect of them. I think it is important to note that during the past 3 years, the Civil Rights Division has commenced over one-third more employment discrimination cases, for example, than the previous administration did during a similar 3-year period during the 4 years immediately prior to Ronald Reagan being elected. During this same period, although they are not many in number, it has authorized twice the number of school desegregation lawsuits; it has participated as a party litigant in twice the number of Voting Rights Act cases. And I could go on down the line to show that there has been no diminution in the vigorous enforcement of the civil rights laws, despite the fact that there are some basic philosophical and policy differences in the approach as to what is the best way to seek remedies and to enforce those laws in particular cases.

Senator MATHIAS. I think you are right that there are different approaches among the American people as to the way in which we achieve civil rights and civil liberties for all Americans. But I think most Americans, millions and millions of Americans, care very deeply about eradicating prejudice and about being assured that their Government is working to eradicate prejudice, whatever means may be taken to do that. I think that is the challenge before you, and it is a matter of some regret to me that I have to say that I think that is a job that needs very urgently to be done.

Mr. MEESE. Well, Senator, I would certainly not disagree with that statement about the job that needs to be done, and I am personally grieved by the perception that you, I think accurately, state exists at least among some Americans. I would want to be sure that the Justice Department conducts itself in such a way as to erase any such perception, no matter what percentage of the people may have it. I think that part of this effort involves better communication with many of the minority groups, the potential and past victims of discrimination themselves, and that is one thing to which I am particularly interested in pledging my tenure as Attorney General, if confirmed by the Senate.

Senator MATHIAS. Well, I welcome that pledge, and I look forward to continuing this dialog, but the chairman tells me that my time on this round is up.

The CHAIRMAN. The last Senator on this side took 20 minutes, so we will give you 20, but we are confining the Senators to 15 minutes, ordinarily. But I want to even it up, so when you come back, you will have 20 minutes.

As I understood, you preferred not to start now, because you would be interrupted in the middle of it; is that correct?

Senator METZENBAUM. I think that is correct, Mr. Chairman.

The CHAIRMAN. Well, I will accommodate you again.

Senator METZENBAUM. You are killing me with kindness, Mr. Chairman.

The CHAIRMAN. We will now stand in recess until 2:40.

[Whereupon, at 1:20 p.m., the committee was recessed, to reconvene at 2:40 p.m. this same day.].

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

The distinguished Senator from Ohio.

Senator METZENBAUM. Thank you, Senator.

The CHAIRMAN. Since Senator Mathias went on, we will give you 25 minutes, too.

Senator METZENBAUM. Mr. Meese, I believe there are some questions concerning the mortgages on your home, and the sale of your California home that bear directly on your confirmation.

Now, it is fair to say that the chairman recited some of this financial data, but it was a little bit difficult to follow, and there are some portions about which I would like to inquire.

First, Mr. Chairman, I ask that several news articles pertaining to this issue be made a part of the record. I intend to refer to them from time to time.

I also have copies for the committee and for Mr. Meese.

The CHAIRMAN. Without objection, so ordered.

[The following was received for the record.].

[From the Los Angeles Times]

HEARINGS MAY FOCUS ON MEESE'S PERSONAL DEBTS—ATTORNEY GENERAL NOMINEE OWED HUGE SUM; LARGE AMOUNT LINKED TO WEALTHY REPUBLICANS

(By Bill Farr and Ronald J. Ostrow)

WASHINGTON.—When President Reagan nominated longtime aide Edwin Meese III as attorney general Democrats saw a politically tempting opportunity to turn the spotlight on controversial Administration policies on civil rights and law enforcement—policies that Meese played a central role in formulating.

Now, however, with Senate confirmation hearings set to begin on March 1, Meese's tangled personal finances—especially his problems with huge debts—promise to become a matter of close congressional scrutiny.

A two-week Times investigation shows that at one point in 1982, Meese owed nearly $483,000 in personal loans. He now earns $72,200 a year as presidential counselor, nearly $12,000 more than when he took the job in November of 1980, and has no substantial sources of outside income. Much of this debt was linked to wealthy Republicans who subsequently received presidential appointments to significant federal posts.

Since the time when his debts peaked in 1982, Meese has reduced the outstanding balances on some of the loans. But he remains deeply in debt, although the exact amount is not publicly available and Meese declined to discuss the matter with reporters before his Senate hearings.

Meese's supporters insist that they can provide logical explanations for his financial woes.

"It's like the shoemaker's daughter who had no shoes," said one White House official, suggesting that Meese has been so occupied with his job that his personal responsibilities have been neglected.

CRITICS POINT TO TIES

Critics, on the other hand, say the circumstances of Meese's financial problems raise questions about his ability to keep his personal affairs completely separate from his role in government. And they argue that such concerns would be particularly acute for an attorney general, whose office not only deals with federal criminal matters but also handles a wide range of antitrust taxation and other issues important to business executives.

The sheer size of Meese's debts, coupled with the fact that he owes the money to persons with direct ties to the Administration, casts doubt on his fitness to serve as the nation's chief law enforcement officer, critics say.

"These transactions smack of a cronyism that calls into question Mr. Meese's suitability to be the nation's top law enforcement officer," said Sen. Howard M. Metzenbaum (D-Ohio), a member of the Senate Judiciary Committee, which will conduct Meese's confirmation hearings.

When Meese's indebtedness climbed to $483,000 in May, 1982, it included four mortgages totaling $273,000 at a composite 9% interest rate on the house in La Mesa, Calif., that he found difficult to sell when he came to Washington with Reagan in 1981, Two of the home loans were from Great American Savings & Loan Assn. of San Diego and the other two were from San Diego Federal Savings & Loan Assn. Both firms are headed by Gordon Luce, a leading California Republican.

On Sept. 15, 1982, Reagan named Luce, one of his major fund-raisers, as an alternate U.S. delegate to the United Nations.

For 22 months after Messe arrived in Washington, he was saddled with mortgages on both the La Mesa house and a new residence that he bought in 1981 in McLean, Va., a posh suburb of Washington. That purchase added another $150,000 mortgage to his obligations. In addition, Meese had to pay thousands of dollars of non-reimbursable moving costs to bring his family and belongings from the West Coast and had college and other educational expenses for three children.

With insufficient income to pay interest on his debts and meet other obligations, Meese turned for help in June, 1981, to his tax attorney, John R. McKean, a San Francisco certified public accountant. McKean arranged two loans for Meese—for $40,000 on June 25, 1981—from a pool of private investors whom McKean has said he could not identify because of privacy considerations.

M'KEAN NAMED TO POST

On March 9, 1982, Reagan named McKean to the U.S. Postal Service board of governors.

A few months later, in the summer of 1982, friends of Meese became concerned about his financial plight and set out to help ease his burden. In one such effort, E. Pendleton James, then White House personnel director, described Meese's situation to Thomas J. Barrack Jr., a wealthy California real estate developer and operator of a Santa Ynez ranch 2.8 miles from the ranch owned by President Reagan.

(When then-Secretary of the Interior James G. Watt headed West for seclusion to decide whether to resign because of controversy created by comments he had made, be stayed at the Barrack ranch.)

Barrack, according to a source close to Meese, approached a business associate, Irv Howard, who the source said wanted to buy a house for his son. In September, 1982, Howard purchased Meese's La Mesa property for $307,500, according to property records on file in San Diego County.

On Jan. 5, 1983, Watt named Barrack a deputy undersecretary of the Interior. Three months later, Reagan announced his intention to nominate barrack as assistant secretary of commerce for trade development, but Barrack decided not to accept the nomination and returned to California before it was submitted to the Senate.

CONNECTION DENIED

Barrack, in an interview, denied any connection between telling Howard that Meese's property was for sale and his subsequent appointments to federal posts. "To the best of my knowledge and belief, it had absolutely nothing to do with it," Barrack said.

Meese repeatedly has denied any links between the appointments of Luce, McKean and Barrack and the assistance they provided him financially. Luce could not be reached for comment, and McKean declined to go beyond his statements contained in a congressional review of his relationship with Meese.

Those designing Meese's confirmation hearings strategy scoff at the notion that a man as well connected with Reagan as Luce would need to arrange loans for Meese to land a U.N. post. They likewise discount any influence peddling suggestions about McKean and Barrack.

Metzenbaum, however, said that he intends to grill Meese at length on all of the financial transactions. He contends that Meese's dealings with men who later received federal appointments are "questionable at best."

RECORDS ASKED

Roy Meyers, an investigator on Metzenbaum's staff, said the senator has asked Senate Judiciary Committee Chairman Strom Thurmond (R-S.C.), to direct Meese to produce all pertinent records on the loan transactions along with his income tax returns for the relevant years.

The questions raised by Meese's loans do not end with the fact that Luce, McKean and Barrack later won appointment by Reagan.

Senate investigators, for example, are looking at the $307,500 that Howard, Barrack's associate, paid for Meese's La Mesa house—a five-bedroom residence with "pool, tropical gardens and waterfall, plus a view deck," according to an advertisement Meese placed when he was trying to sell the property. They are suspicious because Howard sold the property nine months later at a loss exceeding $30,000, not taking into account the monthly payments Howard made on the $246,000 mortgage he had on the property.

The transaction is all the more intriguing because Meese had no buyers for the many months that the property was listed with the real estate agency of Coldwell Banker at $298,000.

PLAN FOR HOME TOLD

Meese supporters explain that Meese initially planned to retain almost half of the 1.7-acre property on a La Mesa hillside. He later raised the asking price to $330,000 when he decided to sell the entire property, a source who has discussed the matter with Meese said.

Howard, according to the source, initially wanted to build another residence on the Meese land alongside the original dwelling that his son would occupy. But he learned that easement restrictions would prevent additional construction and decided to sell both the house and the property.

One further tangle to the Howard house deal that investigators are trying to unravel is a promissory note "in excess of $250,000" that Barrack paid off to Howard's construction firm in January, 1983—just three months after Howard bought Meese's house. Meese supporters, responding to suggestions that the promissory note is linked to the purchase of Meese's house by Howard, deny this and maintain that there is "nothing really questionable" about the payment because Howard's firm had done extensive renovation work for Barrack at a Beverly Hills home.

Barrack said the explanation provided by the Meese supporters is correct, adding that the promissory note "is in no way related to Irv Howard's purchase of the Meese home." He said that he sold the Beverly Hills property and discharged the promissory note on Jan. 14, 1983.

FILE NO LONGER PUBLIC

The large promissory note came to light in the financial disclosure statement that Barrack had to file when the President intended to nominate him to the Commerce Department post. Shortly after a Times reporter obtained a copy of the document, officials closed the file and said it was no longer public because Barrack had decided to forgo the government post in June, 1983, to return to private life.

One of the Meese strategists conceded that the closing of the file "added to the comedy of errors" surrounding Meese's nomination.

Howard could not be reached for comment despite repeated efforts over the last week.

Howard's purchase of Meese's home was the second effort arranged by Meese's friends to help him financially. An earlier deal, involving Gavin Herbert, president of Irvine-based Allergan Pharmaceuticals, was called off. Herbert earlier had been among the purchasers of Casa Pacifica, former President Richard M. Nixon's San Clemente estate.

Herbert had planned in the summer of 1982 to buy the Meese home and then deed it to the University of San Diego, where Meese had served as director of the law school's Center for Criminal Justice before becoming counselor to the President.

POTENTIAL CONFLICT LEARNED

Meese's associates satisfied themselves that nothing about the Allergan firm could embarrass Meese. But after plans for the Herbert purchase were under way, Meese supporters learned that there might be a potential conflict because Allergan was being acquired by SmithKline, a giant in the drug industry.

"The whole deal was called off when it was learned that the Justice Department and the Federal Trade Commission had several open cases involving SmithKline," one of those involved in the aborted transaction told The Times.

Meese had hoped that questions about the $60,000 in loans arranged for him by tax accountant McKean would end with the issuance of a report by the congressional General Accounting Office in September, 1983. While exonerating Meese and McKean of any wrongdoing, the GAO report pointed out that Meese had failed to pay $7,500 in interest on the loans that were due on July 1, 1982.

Meese did not pay interest until Aug. 20, 1983, three weeks after the Washington Post disclosed the loans. At the time of the report, Meese told GAO investigators that he had arranged for a conventional bank loan to repay the $60,000 plus $20,000 in interest that had accrued.

QUESTION ON REPAYMENT

Metzenbaum has said that he wants to question Meese about a lack of documentation showing that he actually repaid the $80,000. But Meese supporters maintain that records will show that Meese repaid the loan plus interest by obtaining a "bridge" loan from the National Bank of Commerce in Washington, D.C., as part of a plan to restructure his debt burden.

Even one of the Meese strategists complains that Meese failed to nail down arrangements for repaying the McKean-arranged loans until after the deadline for the GAO report.

"You don't know how hard it is to get him to focus on his personal matters," the strategist contended.

The GAO report said that McKean's "forbearance" on the interest due should have been reported as a "gift" on Meese's 1983 financial disclosure statement, but it softened the criticism by stating that Meese probably was unware of the requirement. Meese subsequently provided the information.

"NOT QUID PRO QUO"

GAO investigators accepted Meese and McKean's statements that the tax accountant's appointment to the Postal Service board "was not a quid pro quo" for McKean having arranged the loan.

But the GAO report noted that McKean's name was added in handwriting to a typed list of potential appointees to the Postal Service board just 18 days after the first loan to Meese. The list was compiled by former White House Personnel Director James' office, and Meese was among four officials on a panel that selected McKean from the list.

McKean, who receives a $10,000 salary from the Postal Service plus $300 a day for expenses during as many as 30 days a year of meetings was elected ultimately by the board to be its chairman.

McKean told the GAO that Deputy White House Chief of Staff Michael K. Deaver, whom he also serves as tax adviser, first approached him about the postal appointed. In addition to the loans to Meese, McKean also arranged with a partner to lend Deaver $58,000 so that Deaver could buy a tractor-trailer truck and lease it out as a way to defer tax payments.

[From the Los Angeles Times, Feb. 20, 1984]

MEESE TO RESIGN AS ARMY COLONEL—WILL GIVE UP RESERVE POST TO END CONTROVERSY

(By Bill Farr and Ronald J. Ostrow)

WASHINGTON—Atty. Gen. designate Edwin Meese III has decided to give up his disputed status as a colonel in the Army Ready Reserve to remove an element of controversy before his Senate confirmation hearings begin March 1, The Times learned Sunday.

Meese's 1981 promotion from lieutenant colonel to colonel and his transfer from the inactive reserve six days before mandatory retirement drew charges from an unidentified officer that "undue influence" had been brought to bear.

A seven-month Army investigation recommended last September against revoking the promotion of Meese, who is counselor to President Reagan, but found that there had been unintentional irregularities involved in the process. Senate investigators listed Meese's promotion and transfer among areas that they would probe in the upcoming confirmation hearings by the Judiciary Committee.

Administration sources, who asked that they not be identified, said Sunday that Fred F. Fielding, counsel to the President, had urged that Meese at least transfer back to the retired reserve, a move that would trigger mandatory retirement.

One source said Fielding wanted Meese to leave the reserve to "remove the controversy."

"It was a very hard decision for him because he really likes that military involvement, and I think he had visions of utimately becoming a general," an associate of Meese said Sunday. "But he was finally persuaded that resigning would defuse—or at least diminish—it (to promotion) as an issue."

The Times, after a two-week investigation, reported Sunday that Meese's personal finances are certain to fall under close congressional scrutiny. At one point in 1982, it was reported, he owed nearly $483,000 in personal loans.

Meese has refused to discuss any matters involving his confirmation until the hearings are completed, and efforts to reach him for comment Sunday were unsuccessful.

He is expected to resign his commission in the reserve this week, saying that he could not be mobilized in a time of emergency from his prospective position as attorney general. Meese, in Pentagon argot, is an "individual mobilization augmentee," with his assignment being Defense Department liaison with the Selective Service System.

Quitting the ready reserve would mean that Meese could no longer draw colonel's pay for two weeks a year of active duty and could possibly affect any retirement pay he receives after he turns 60, a Pentagon spokesman said.

MAY NOT BE ELIGIBLE FOR RETIREMENT PAY

But the spokesman said he could not determine Sunday whether Meese already has completed the 20 years of active reserve service that would make him eligible for retirement pay.

Last March, when the investigation by the Army inspector general came to light, Meese said, "I know of no undue influence. As far as I'm concerned, there was nothing unusual."

The inspector general found that, in Meese's promotion, some "procedures were misapplied, violated or ignored," but added, "There was no evidence this was by design or (was) intentional."

The promotion to full colonel normally requires completion of a course at the Army's Command and General Staff College. But, in Meese's case, his White House experience was substituted for the schooling. He was one of 632 officers promoted out of 2,590 considered for advancement.

The promotion was approved by Maj. Gen. William R. Berkman, chief of the Army Reserve and an old friend of Meese who once served with him in a reserve unit in California. Berkman's reappointment as chief of the Army Reserve was confirmed by the Senate on Feb. 24, 1983, the same day that the Senate approved Meese's reserve promotion to colonel.

[From the Washington Post, Sept. 21, 1983]

HOUSE MEMBERS REQUEST REVIEW OF MEESE LOANS

(By Charles R. Babcock)

Three House members yesterday asked the Justice Department to review a General Accounting Office report that "raises questions" about the handling of $60,000 in loans arranged for White House counselor Edwin Meese III by a presidential appointee.

The report said Meese owed $20,000 in interest on the loans as recently as last month, including $7,500 that he failed to report as a "gift" on his latest financial disclosure statement.

The loans were arranged in 1981 by his personal accountant, John R. McKean, while Meese and another McKean client, White House deputy chief of staff Michael K. Deaver, were getting McKean a $10,000-a-year presidential appointment to the U.S. Postal Service board of governors.

Meese said yesterday that the GAO report showed that there was "no wrongdoing" and that the $60,000 loan and $20,000 in interest were paid within the last month, after he took out an $80,000 bank loan.

"The important thing is that the loan has been paid back, as was intended. That was always the case," Meese said. He said he will work with White House counsel Fred F. Fielding, if necessary, to amend his financial disclosure statements.

McKean could not be reached for comment.

In their letter to Attorney General William French Smith, three members of the House Post Office and Civil Service Committee said the GAO report "raises questions concerning the circumstances surrounding the nomination and confirmation of Mr. McKean." Meese and McKean have said there was no connection between the loans and McKean's appointment.

A Justice Department spokesman said Smith had no comment because he has not seen the report.

McKean arranged a total of $60,000 in loans to Meese in July and December, 1981, from an office "investment pool" of other clients' money, the GAO report said. Meese's financial disclosure statements show that he put up no collateral for the loans in 1981, that the principal was not due until McKean demanded it and that the interest, from 18 to 21 percent, was payable annually.

McKean was nominated in November 1981, to fill a five-year opening on the Postal Service board. The report noted that McKean made no mention of his "fiduciary" relationship to Meese when asked about such responsibilities during his confirmation process.

The report also said McKean told GAO investigators that he began thinking in mid-1982 that he would like to have a full nine-year term on the Postal Service board and discussed it with Meese and Deaver that fall. During the same period he was sending Meese bills for the overdue loan interest, but did not press for payment, the report said. McKean later received the nine-year appointment.

McKean, who said he served as a "trustee" for the loan pool, told The Washington Post in July that Meese had not paid any of the principal on the $60,000, but was "doing all right" on the interest. White House counsel Fielding said then that it was his understanding that the interest payments "have been made in timely fashion."

The GAO report shows that Meese did not pay any interest until Aug. 20, 1983, three weeks after The Post ran an article on the Meese loans. He then paid McKean $100 and signed an application for the $80,000 bank loan, which the report said was to be secured by a second deed of trust on Meese's McLean home.

Meese insisted yesterday that he was never behind in the interest payments because he and McKean had an agreement that he should pay the interest this year. The GAO report said, however, that McKean sent Meese bills for the interest on at least three occasions. The report quoted the notes as providing that "payments of interest are to be made not less than annually."

The GAO report said that Meese did not pay $7,500 in interest that was due July 1, 1982, and said McKean's "forbearance" of the money due should have been reported on Meese's 1983 financial disclosure form. It added that Meese probably was unaware of the requirement.

McKean told The Post in July that Meese had "a negative cash flow, a deficit" in early 1981 and needed the personal loans for his children's tuition and living expenses because he hadn't been able to sell his California home. His disclosure statements show that he is not a wealthy man.

Land records in California and Virginia show that when Meese went to McKean in June, 1981, he was carrying $423,000 in outstanding loans on his homes in San Diego and McLean.

The McLean house, which Meese bought in February, 1981, had a $150,000 mortgage. He had borrowed $273,000 against his San Diego house and didn't sell it until August, 1982, nearly 20 months later.

The interest rates on the various housing notes aren't recorded, but if they averaged 10 percent, his debt service would have been more than $40,000 a year, not counting the personal loans he got through McKean. Meese made $60,000 a year at the time.

The GAO report said McKean sent Meese a bill for $3,900 in interest on the first personal note in June, 1982—six months after it was due—but received no payment.

Land records show that Meese sold his house in San Diego two months later for $307,500, but had to use most of the proceeds to pay off the four deeds of trust totaling $273,000.

Last November McKean sent Meese three more bills, totaling $12,000, for interest due on the personal notes the GAO said. No payment was received.

Land records and interviews show that Meese listed his home in the suburb of La Mesa unsuccessfully with Coldwell-Banker and then sold it without a broker's help in August to Lucy Ann and Irving Howard.

Howard, 57, a contractor, and his wife got a $246,000 loan to buy the house from Great American Federal Savings and Loan Association, which held Meese's mortgages. Howard never moved into the house, and sold it last June for $275,000 taking a $32,500 loss. The bank let the new buyer assume the 11 percent loan for five years.

Howard said in a brief telephone interview that he bought Meese's house "as an investment" and sold it at a loss. He said he had planned to build another house on the property, but "there were a lot of easements I didn't know about. It cost me some money."

Howard said he has never met Meese and didn't recall how he learned that the Meese home was for sale.

The GAO report also said McKean arranged a $58,889 loan from an Idaho business partner to Deaver's wife in 1981 so the Deavers could defer taxes on a lump-sum payment from his consulting firm. The loan was used to buy a truck, which was then leased back to a firm owned by McKean and his partner, and then re-leased to another firm. Deaver's financial statement on the transaction was complete and accurate, the GAO report said.

Rep. William D. Ford (D-Mich.), chairman of the Post Office Committee, and two of his subcommittee chairmen, Reps. Robert Garcia (D-N.Y.) and Mickey Leland-(D-Tex.), also sent copies of the report to Fielding, the Senate Ethics Committee and the Office of Government Ethics, which reviews executive branch disclosure forms, and asked each of them . . .

[From the Washington Post, July 23, 1983]

APPOINTEE ARRANGED LOANS

(By Charles R. Babcock)

Top White House advisers Edwin Meese III and Michael K. Deaver received $118,000 in loans in 1981 that were arranged by their California tax accountant at a time they were getting the accountant a $10,000-a-year presidential appointment to the U.S. Postal Service's board of governors.

Meese's financial disclosure form shows two personal loans, which total $60,000, directly from the accountant, John R. McKean. McKean said in an interview that he set up the transaction, but considered himself merely the "trustee," because he raised the money from other clients who didn't know the funds were going to Meese.

Meese put up-no collateral for the loans, and his financial disclosure form shows that the money is not due until demanded by McKean. The interest, of about 18 percent, is due annually and is payable to McKean. McKean said Meese is "doing all right" on the interest payments and has not paid any of the principal.

The first loan to Meese, for $40,000, was made in July 1981. Later the same month, McKean said, Deaver called him to ask if he was interested in the presidential appointment. The second loan, for $20,000 was made in December 1981, a month after McKean's nomination was announced by the White House.

Meese did not return a reporter's calls for comment. An aide said Meese used the money to pay school tuition for his children and for living expenses and that it was not connected in any way to McKean's selection.

Deaver was given a loan of $58,000, also arranged by McKean, in October 1981 to buy a tractor-trailer truck that allows Deaver and his wife, Carolyn, to defer a few thousand dollars in income taxes over five years. The note, held by a McKean business partner in Idaho is at 18 percent interest, and is scheduled to come due in 1986. McKean said there was a $1,500 down payment on the loan.

The Deavers have leased out the truck, and Deaver's latest financial disclosure form shows at least $15,000 in 1982 income from this lease.

Deaver is traveling abroad and could not be reached for comment.

The Senate Governmental Affairs Committee, which has jurisdiction over Postal Sevice board appointees, asked McKean during the confirmation process why he was selected for the post.

In his Nov. 17, 1981, answer to the committee McKean wrote: "Members of the administration, namely Mr. Michael Deaver and Mr. Edwin Meese, were aware of my background, and it is my understanding that my name was submitted to the president for nomination by these parties."

The Senate committee did not ask, and McKean did not volunteer, whether he had any financial dealings with Reagan administration officials.

Initially, McKean was appointed to the nine-member board of directors for the $25 billion-a-year Postal Service operation to fill a term that expires in 1986. Earlier this year he was renominated to a full nine-year term that expires in December 1991.

The Postal Service governors are paid $10,000 a year, plus expenses and an additional $300 for each monthly meeting they attend. Postal Service records show that McKean has been reimbursed for more than $18,000 in expenses since he joined the board in April 1982, most of that for first-class air fare back and forth from San Francisco to meeting sites in Washington and at regional offices.

McKean's relationship with the two White House aides and his appointment to the Postal Service board were discovered during a routine check on the people who had lent money to high-ranking administration officials.

Meese and Deaver, who are not wealthy, have indicated that their White House service has caused them financial hardship. As two of the most senior White House officials, they each make $69,800 a year.

The loan McKean arranged for Meese is the only outstanding financial obligation Meese listed in the financial disclosure form he filed last May 16. The loan McKean arranged for Deaver, which is held by a McKean business partner, Helmut Moss of Boise, Idaho, is one of three debts reported by Deaver. The other two are bank loans of at least $15,000 each.

McKean, 53 is the head of his own accounting firm in San Fancisco. He said in telephone interviews this week that he considered the loans he arranged to be of a "purely professional nature" and "a logical extension of a professional service to a client."

He said he met Deaver before President Reagan was elected in 1980 and did some accounting and tax projection work for Deaver. Deaver recommended him to Meese and he now does tax work for both men. He said he does not socialize with either, seeing them only for an occasional lunch.

He said that a review of Meese's finances in 1981 had showed "a negative cash flow, a deficit. There was going to be a necessity for some type of borrowing" He said he didn't know why Meese didn't go to a bank. "He came to me. It was intended to be something that rolled over very, very quickly. We call them swing loans."

McKean said they didn't turn out to be short-term loans because Meese had difficulty selling his home in California. During the same period Meese was buying a home in Virginia and had to make tuition payments for two of his children.

Meese sold his home in La Mesa, Calif., in September 1982 for more than $250,000, but has not paid any of the principal on the loans. "With the situation like it is we will likely consolidate the loans and have [them] collateralized against his Virgina home," McKean said.

McKean said he would arrange a similar loan for any client with a "working capital impairment" and had done so for others on a few occasions.

The clients who put up the money for the Meese loan did so because they trusted that McKean would see the money was repaid, he said. He didn't tell those clients that Meese was the recipient "just in case they had some business transactions with the governments."

He said he told Meese that others had provided the money for the loans and he, McKean, should only have been listed as "trustee" on Meese's disclosure form. Reporting the loans from McKean personally—the way they now appear on the disclosure form—might be looked at askance," McKean said. He said he had no idea why the word "trustee" was not added and that, because of the omission, I was left hanging out there as the lender.

The loan he arranged for Deaver, in the name of Deaver's wife, Carolyn, was simply to defer taxes because Deaver had "bunched up income" from a lump sum payment from his public relations firm, Deaver and Hannaford, McKean said. He said the arrangement deferred "a few thousand dollars" in taxes for Deaver, most in the first year of the lease.

The note is held personally by his partner, Moss, of Idaho Peterbilt Inc. in Boise, the accountant said, because "I didn't want to participate in anything with Mr. Deaver directly. He said he didn't want to benefit personally from the arrangement. Moss owns 75 percent of the company, a distributorship for Peterbilt trucks, McKean owns the other 25 percent.

Asked why he referred Deaver to his partner, McKean said he had found that tax syndications "are often not what they are presented to be. This is one I had direct knowledge of and could assure that it would turn out as planned."

Moss said in a interview from Boise that he has never met Deaver and was only vaguely familiar with the details. "McKean handled all the paperwork on that," he said.

Moss said he didn't know why the Deaver liability was listed with him as the creditor, rather than his company. "There must be a tax break there somehow. I leave that all up to him [McKean]. My end is seeing that the trucks run."

McKean said he did not expect anything in return for his financial assistance to Meese and Deaver. "And if I did it wouldn't have been the Postal Service," which he described as a "tough job and a lot of work." He also said he didn't think Meese and Deaver were returning a favor by getting him the appointment. "They saw someone performing something in a professional manner and thought I could serve the government.

McKean, whose financial disclosure form shows his net worth to be $1.7 million, said that when he first joined the Postal Service board he didn't know much about the huge business, but now "I hope I have projected a certain competence in my field I think I can make a contribution."

Senator METZENBAUM. In order to save time, I plan to go through the dates and figures of various mortgages on your properties, and ask you to tell me if my figures are correct.

First, you bought a home in La Mesa, CA, a suburb of San Diego, in April 1975 for approximately $130,000; is that correct?

Mr. MEESE. That is correct, I believe it was $132,000.

Senator METZENBAUM. You secured a $104,000, 30-year mortgage, from San Diego Federal Savings and Loan; is that correct?

Mr. MEESE. Yes, sir.

Senator METZENBAUM. By the way, I think San Diego Federal Savings and Loan changed its name a few years ago to Great American Federal; is that your understanding?

Mr. MEESE. Yes. Actually, it expanded and Great American Federal is the overall company. There is still a San Diego Federal Savings and Loan that operates in San Diego as a division of that corporation.

Senator METZENBAUM. But you would find no objection if I refer to San Diego Federal, Great American—we are referring to the same bank?

Mr. MEESE. Yes, Senator.

Senator METZENBAUM. Do you recall the interest rate on that mortgage?

Mr. MEESE. Yes. The first mortgage interest rate was 8½ percent.

Senator METZENBAUM. In July 1979, you secured a second mortgage on the home with San Diego Federal, for $16,000; correct?

Mr. MEESE. Yes, sir.

Senator METZENBAUM. Do you recall the interest rate and terms of that loan?

Mr. MEESE. I believe it was 11½ percent.

Senator METZENBAUM. In February 1981 you secured a third mortgage on the same home with San Diego Federal for $132,000; is that correct?

Mr. MEESE. Yes, sir.

Senator METZENBAUM. Do you recall the interest rate and the terms of that loan?

Mr. MEESE. No; I do not. I do not recall the exact amount, but I believe it was greater than 11½ percent. I think it was somewhere in the neighborhood of 13 percent.

Senator METZENBAUM. Now, in the same month, February 1981, you bought a home in McLean, VA, for $265,000, and secured a first mortgage loan of $150,000 from Washington Lee Federal Savings and Loan in McLean; is that correct?

Mr. MEESE. That is correct.

Senator **Metzenbaum**. Do you recall the interest rate and the terms of that loan?

Mr. **Meese**. I believe that it was 13½ percent. And I believe also that the interest rate was reviewable over every 3 years and could be adjusted depending on what the market rates were doing at this time. I believe this is for a period of 30 years also.

Senator **Metzenbaum**. Is it correct to assume that most of the second mortgage loan was used for the downpayment on the home in Virginia?

Mr. **Meese**. Yes; it was. The downpayment and improvements to that same home.

Senator **Metzenbaum**. Would you clear up something for the committee? I am not clear on it. The records in Fairfax County, VA, were checked by my staff last week. They show the first mortgage on your home is with the Washington Lee Federal Savings and Loan. But your net worth statement filed with the committee says the mortgage is with Great American in San Diego. Can you clear that up?

Mr. **Meese**. Yes; the loan was purchased by Great American Federal Savings and Loan at par from Washington and Lee. The loan is now held by Great American, and they are the ones to whom I make payments.

Senator **Metzenbaum**. Was it planned that way originally when you made the loan in Virginia?

Mr. **Meese**. Yes, sir; it was. However, Great American was not generally doing business in Virginia at that time, although I had done business for quite some time with them, so they made the arrangements.

Senator **Metzenbaum**. What is the interest and terms on that first mortgage with Great American?

Mr. **Meese**. The first mortgage, the one I just described, has the same rate, 13½ percent.

Senator **Metzenbaum**. Finally, in May 1982 you secured a fourth mortgage of $21,000 on your home in California again with Great American; is that correct?

Mr. **Meese**. Yes, Senator.

Senator **Metzenbaum**. Making the total $273,000, as we figure it, plus the $150,000 mortgage loan on the Virginia home.

Mr. **Meese**. Yes.

Senator **Metzenbaum**. So that at that point you have five different mortgages with Great American Federal totaling $423,000.

Mr. **Meese**. That is correct.

Senator **Metzenbaum**. Do you recall what your total monthly payments for interest, principal and taxes were at that point?

Mr. **Meese**. Yes, sir. Two of those loans were demand loans rather than monthy payment loans. The payments for the other two were about $1,659 on one and $779 on the other, for a total of about $2,400 and something a month.

Senator **Metzenbaum**. That is without paying anything on the demand loans?

Mr. **Meese**. Yes, sir; the plan for the demand loans was to satisfy them out of the sale of my home.

Senator Metzenbaum. Well, is it correct to assume that if you have $423,000 in mortgages, that your interest obligations would be at an annual rate of something in excess of $45,000 a year?

Mr. Meese. I do not know exactly what they were. I am sure they could be calculated. I do know that they were extensive.

Senator Metzenbaum. Were you making the payments on time?

Mr. Meese. Most months we were. Some months we were not.

Senator Metzenbaum. Were there any payments of interest deferred by Great American?

Mr. Meese. No, sir; not to my knowledge.

Senator Metzenbaum. Did you have any arrangement to defer the payment of any of the interest or principal payments in connection with those loans?

Mr. Meese. We did not have any arrangements to defer the payments. When they did get behind, due to the extraordinary financial circumstances at the time, we did combine them into the fourth mortgage that you described earlier in 1982.

Senator Metzenbaum. Now, in February 1981, upon coming here to Washington, you put your home in La Mesa on the market. What was your original asking price?

Mr. Meese. The original asking price was—let me, if I may, preface my response with an explanation. There were two parcels. There was one parcel of approximately 1 acre on which our home was located, and there was another parcel immediately adjoining that with three-quarters of an acre, undeveloped. We put the parcel on which our home was located on the market for $319,000.

Senator Metzenbaum. Was that the listing with Caldwell Banker?

Mr. Meese. Yes, sir.

Senator Metzenbaum. $331,000?

Mr. Meese. $319,000.

Senator Metzenbaum. I have information, and I am not questioning your statement, but I just want to be certain—I do not know where we picked up this information, that it was listed for $298,000. .

Mr. Meese. That was later in the year, when we reduced the price from $319,000 to $298,000.

Senator Metzenbaum. And you had it on the market for about 8 months, and then the listing ran out?

Mr. Meese. Something like that. I do not know the exact number of months, but it was something like that.

Senator Metzenbaum. Now, let me understand something. You had it listed for $319,000. You then reduced it to $298,000?

Mr. Meese. Yes, Senator.

Senator Metzenbaum. Do I understand that in October 1981 you then relisted it with Caldwell Banker for $330,000?

Mr. Meese. We listed then the two parcels, the parcel on which our home was located joined with the additional parcel, which was larger with almost 2 acres of land. At that time we listed it for $330,000; yes, sir.

Senator Metzenbaum. Now, that listing ran out again in May 1982, 15 months after your original listing, and did you relist it at that time?

Mr. MEESE. We did not list it exclusively. We advised Caldwell Banker that we would welcome their selling the house; but we also felt that since they had not sold it in 15 months we would have to look elsewhere, so we could not give them an exclusive listing.

Senator METZENBAUM. What efforts did you make to sell it?

Mr. MEESE. We talked to various other people. We talked with various friends of ours who might pass it on to people that were in the real estate and land development business.

We also were considering at that time possibly leasing the property, since it had not sold; we were in the process of discussing that during the summer of 1982.

Senator METZENBAUM. Now, after you take it off the market, 3 months later, 20 months after it was first listed for sale, you sold the home in late August to a man named Irv Howard, is that right?

Mr. MEESE. Your statement is not exactly right. We never took the home off the market at any time during the 20 months.

Senator METZENBAUM. But it was sold to a man named Irv Howard, 20 months after you had first listed it?

Mr. MEESE. Yes.

Senator METZENBAUM. And what was the price Mr. Howard paid?

Mr. MEESE. He paid $307,500 for the property that was listed at $330,000.

Senator METZENBAUM. And at that point your four mortgages were paid off at Great American, and your only debt remaining then was $150,000 first mortgage on your Virginia home, is that correct?

Mr. MEESE. Yes, Senator.

Senator METZENBAUM. Let us go back to your situation in 1981 and 1982, if you will.

Your home in La Mesa was listed for 8 months, and you had no offers at that price, is that correct?

Mr. MEESE. I believe there may have been some offers during that period of time. I know we periodically had offers for the property, but I cannot tell you exactly when. Certainly there were no offers that culminated in a sale.

Senator METZENBAUM. Now, in October of 1981, when your listing runs out, how many months behind were you on the first mortgage payments on your La Mesa home?

Mr. MEESE. I do not know at this point, because we had paid some of those payments—well, actually on the La Mesa home, we probably had not. We had made payments on our Virginia home. I cannot tell you how many payments we were behind.

Senator METZENBAUM. But you were behind. There were a number of payments missed?

Mr. MEESE. Yes, sir; there were some payments missed.

Senator METZENBAUM. And how many months were you behind on the second mortgage on that home?

Mr. MEESE. Likewise, I think we were probably behind on some of those, as well.

Senator METZENBAUM. While you are delinquent, and I guess that is the only way you can state it, if you do not maintain your mortgage payments, you are delinquent, you negotiate a third mortgage on the same home, with the same lending institution, for an additional $132,000 in February of 1981, is that correct?

Mr. **Meese**. That was negotiated before we were delinquent on any payments. We were current on our payments in February 1981. That was just after we had moved to Washington.

Senator **Metzenbaum**. Now, according to the records you have provided us in connection with that loan, you were not required to make any principal payments, but you were supposed to make interest payments monthly at a rate of 15 percent annual interest beginning March 13, 1981, is that correct?

Mr. **Meese**. I would have to consult the documents—if you are reading from one of those documents. I do not have the document available now. I would be happy to consult it.

Senator **Metzenbaum**. That is based upon the information that we have been able to get.

Mr. **Meese**. I will find out. My understanding was that the interest was payable at the time of the demand on the note, since it was understood at the time it was taken out that it would be paid out of the proceeds of the sale of our home in La Mesa.

Senator **Metzenbaum**. Now, Mr. Meese, I have been told that general banking policy dictates that if you are delinquent 4 or 5 months, that most often leads to a foreclosure.

I have also been told that there were more than 13,000 foreclosures in San Diego County in 1981, an increase of 60 percent over the previous year. In most cases, the average delinquency was 5 months.

Was any foreclosure action taken, or even threatened against you, by Great American?

Mr. **Meese**. No, sir, not to my knowledge.

Senator **Metzenbaum**. Let us go on.

For whatever reason, you relist the house with the same broker. You raise the price tc $330,000 in October 1981.

Now, on February 17, 1982, according to documents you have provided us, Mr. Scott McHenry, senior vice president and loan services officer of Great American, sent you the following letter—I will come back to the question because we cannot lay our hands on the letter at the moment.

I will say this to you. I read the letter, and I will come back to it, and read it to you; my recollection of it is that they indicated that they are lending you the additional money, and that they are then going to give you $20, or you owe them that $20 at that time, and that they are—here is the letter.

> **Dear Ed and Ursula**: We will renew your current $132,000 loan to mature on August 16, 1982, rather than the June 15, 1982 date that had been discussed before. The interest rate of 15 percent will remain the same. Principal and interest will be due and payable at maturity; this includes the interest already accrued from February 20, 1981.

Now, at that time, that loan had been made in February 1981, this letter is dated April 19, 1982, you had made no interest payments, and you had made no payments, and in addition, the letter indicates that we will also advance an additional $21,000 new loan secured by a fourth deed of trust on the La Mesa home, to make the following payments, and then they provide on your first mortgage that will include four payments that are delinquent, at

$1,639.30 each, on the Virginia home; 15 payments that were delinquent on the La Mesa home, for a total of almost $12,000; and another 15 payments on the second mortgage on the La Mesa home, for a total of $2,378 and recording charges, and then they say that a check from you will cover the $20 difference in the loan amount and the total.

Now, I must say that I have served on a couple of bank boards. When the debtor is delinquent 15 months, and on two of the mortgages, and 8 months on the other, no interest or payments made, and then they not only are going to say that you give them $20 to cover the difference, they give you pretty good service.

> I will deliver the documents to you for signature, and suggest we meet at Lee Knutson's office so a notary will be available. Please advise me by telephone as to the appointment time.

Now, it has been my experience that bankers, people generally—millions of Americans know that bankers are not usually that friendly a crowd when somebody is 8 months in arrears—and his payments are 15 months in arrears.

Were the two letters you provided us the only communications you had? Were there any strong dunning letters, or phone calls, or mailgrams?

Mr. **MEESE**. There were, as I recall. I do not think I have the letters, because I think you have all the letters I had in my possession concerning this matter; but there were letters from time to time advising us of the situation, and there were telephone conversations on several occasions.

The savings and loan company knew of our situation. Obviously, they were interested in having their loans satisfied, and they were not interested in foreclosing. They would rather have had the loans satisfied. They knew the reason why the payments were not being made, and they also knew that they had more than adequate security in the house.

Senator **METZENBAUM**. Let me summarize. You are 15 months in arrears in interest on the third mortgage. You are 15 months in arrears on the second mortgage. You are 15 months in arrears on the first mortgage, and that amounts to almost $40,000, according to my calculations, which should have been paid to that bank, that was not paid, although you had signed agreements to do so. Another $7,000 on your Virginia home that should have been paid, although it was not, and you had signed agreements to do so.

Now, I am sure, Mr. Meese, you remember many of the news reports in the middle of 1982. I am sure you remember, because I am sure there was great concern in the White House. We were in the middle of one of the deepest recessions in our history. We were approaching, in some cases, exceeding, the statistics of the Great Depression. Unemployment was at record levels, and bankruptcies were soaring. Mortgage foreclosures were occurring throughout the country.

The **CHAIRMAN**. Senator, your time is up.

Would you like to go 5 more minutes, and take it off of your next round?

Senator **METZENBAUM**. I appreciate that.

I am sure that you and the President watched many of those newscasts, as I did. We watched scenes of Ohio families and farm families throughout the country, almost in open rebellion, as the foreclosure gavel came down, and their life's work was wiped out.

Mr. Meese, can you possibly imagine the anger, the outrage, the frustration of those people, if they had been aware that the counselor to the President, one of the top three persons in the administration, was from 4 to 15 months behind in his mortgages, and had received very specal consideration from his bank?

Now, it relates to the whole fairness issue that some of my colleagues had spoken to, and maybe I am off base, Mr. Meese. Maybe we can brush off your situation, to use your term, as anecdotal. But after telling you that your mortgage is in default—your payments are in default, what does he do? Does he threaten you with foreclosure?

No; he does not do that. Does he demand payment, or else? No. He says, we will advance you an additional $21,000 new loan to make up the payments. No loan application made. You are to pay no points, as would other borrowers, no closing costs, no title search, no appraisal fees.

In fact, the only charge is $8 for a recording fee. When all is said and done, in order to make up for 15 months of absolute nonpayment, what are you called to do? This letter speaks for itself.

They will bring you the papers over to your lawyer's office, and you pay $20.

Mr. Meese, I have to wonder, is this special privilege? Is this some special advantage that was accorded you because you were and are who you are, and what would the average American feel about special arrangements of this kind with a banking institution, that probably no other American would get?

Now, I would like to talk with you further, when I get back to my time, about your personal relationships with some of the people at the bank, with some of the positions they wound up holding in this administration, and your involvement or lack of involvement in that connection.

The CHAIRMAN. I think we better let him answer now.

Mr. MEESE. I do not believe, Mr. Chairman, there is any question before me.

Senator METZENBAUM. My time is about up. I am prepared to go on for the balance of the afternoon if I may have the time, but there are a number of—I wish to go further into his relationship with Great American.

The CHAIRMAN. We will get back to you.

The distinguished Senator from Nevada.

Senator LAXALT. Mr. Chairman, I will yield my time temporarily. I hope that the Chairman would recognize me later.

The CHAIRMAN. You would want to reserve your time and give your time now to Senator Hatch.

Senator HATCH. I will only ask a few questions; then we can return to Senator Metzenbaum.

Just to set the record clear, when you become Attorney General of the United States, will your door be open to all civil rights groups whether or not they support your policies?

Mr. MEESE. Yes, Senator; it will. I believe that type of communication is important.

Senator HATCH. Have you met with any civil rights groups in preparation for these hearings?

Mr. MEESE. Yes; several groups asked to meet with me in the course of the last several weeks, and I have met with four or five different groups and their representatives.

Senator HATCH. I understand that as a prosecutor in California, you successfully obtained convictions for certain students for illegal sit-ins. I also understand that you were credited by their defense attorneys with subsequently ensuring that these students received sentences that would be expunged to show no criminal record if the student committed no further crime.

Is this accurate? If so, why did you go to these lengths to do this immediately after you had successfully prosecuted these students?

Mr. MEESE. Senator, it is accurate that I participated in discussions which led to that result, discussions in which the defense attorneys, the judge, and the prosecution participated. The reason was that many of these young people did not really understand the gravity of what they were doing. It was our feeling that many of them had been perhaps misled into the kind of conduct that led to their arrest, and this would give them an opportunity to expunge this conviction from their records so that in the future they would not have to answer that they had ever been arrested or convicted.

Senator HATCH. Have you ever prosecuted any white-collar crime and, if you have, please describe your experience there.

Mr. MEESE. I prosecuted a great deal of white-collar crime while I was in the district attorney's office, because I had the responsibility for special investigations and the grand jury. I had most of the major complex fraud cases that were brought before the district attorney's office in Alameda County during the 3 or 4 years I was there. These included complicated bank embezzlement cases, check and financial kiting cases, stock fraud cases, and the like.

Senator HATCH. One of the things a number of us on the committee are interested in is, of course, drug enforcement policy. Due to your work in the White House and Attorney General Smith's work in the Department of Justice, we have seen a noted improvement in coordinated drug enforcement policy in this country. At least I, for one, feel this way.

Would you intend to continue the Department's emphasis on task forces and interagency cooperation?

Mr MEESE. Yes, sir; I would. They have made a material contribution to the drug enforcement program, and I would continue them.

Senator HATCH. Do you have any other ideas about enhancing drug enforcement in this country?

Mr. MEESE. One of the things occurring now of course, is the Organized Crime and Drug Enforcement Task Forces, which are really getting underway in most parts of the country. I feel that these activities, plus the Law Enforcement Coordinating Council at the local level, should be very closely monitored to see what comes of this effort and what additional improvements might be needed. I would personally pay a great deal of attention to this in the Department to make sure that the coordinated effort, as well as the enhanced resources available for drug enforcement, were provided.

Senator **Hatch**. Mr. Chairman, I do not need to ask any further questions at this time. I would like to reserve the balance of my time, however.

The **Chairman**. The Senator from Utah reserves the balance of his time.

The distinguished Senator from Alabama, Mr. Heflin.

Senator **Heflin**. Mr. Meese, one of the major problems dealing with criminal law today is the issue of drug law enforcement and the importation of drugs into this country and there has been a strong desire and commitment by the Congress and the administration aimed at halting the flow of illegal drugs being smuggled into our country.

The South Florida Task Force has been fairly successful in curbing the drug traffic along the Florida coast and efforts of the Coast Guard have been helpful there as well as in an area fairly close to the Yucatan Peninsula in stopping vessels smuggling illegal drugs.

However, a new corridor has opened up along the southern border of the gulf coast, and drug traffickers are now shifting from vessels to aircraft. The densely populated peninsula of Florida has few secluded airfields and law enforcement there is attuned to the profile of drug trafficker transports. The coastline of northwest Florida is the location of two military installations, Tyndall Air Force Base and Eglin Air Force Base, which shields the area from aircraft utilized by drug traffickers.

A pilot carrying drugs would be less than prudent to attempt to penetrate the airspace in these two high security areas.

This pushes the next best entry west to an area on the Alabama-Mississippi gulf coast near Mobile to which a large amount of drugs, it is believed, passed each month. That area roughly extends from the Alabama-Florida State line on the east to the New Orleans territorial area on the west. By using small aircraft, drug traffickers can smuggle to points 400 miles or more inland, as far as Tennessee, Arkansas, as well as Alabama, Mississippi, and Louisiana.

The distribution of these drugs reaches as far as the Midwestern and Northeastern sections of the country. Increasing amounts of illegal drugs being smuggled into the United States is staggering. It is a multibillion-dollar enterprise and not limited to drug pusher on the street, but invokes elements of organized crime as well.

It seems as one avenue of access is closed, another opens. But for those who smuggle the drugs, the business is very lucrative, but for those, of course, who become addicted to its power, then the effect is devastating. This is a severe national problem in my judgment, and the increased traffic through what we, in the gulf coast area, call the Mobile corridor, in my judgment, should be addressed.

I would like to inquire of you as to your intentions relative to drug enforcement and what do you intend to do relative to trying to stop drugs coming into this area and, in particular, relative to the Mobile corridor?

Senator **Biden**. Tell them about my drug bill.

Mr. **Meese**. I would agree with your assessment of the severity and enormity of the problem, and particularly in the area you indicate. It is correct, as you point out, that aircraft are more and more being used to import drugs into this country. One of the things that I would be very much involved in doing, and very interested in doing, is expanding the enforcement capabilities of the Federal Government by utilizing every possible resource of that Government to interdict the air transportation of drugs. Already plans exist and I would certainly accelerate and to the extent possible expand those plans to utilize the capabilities of the Armed Forces, such as the AWAC's capability of the Navy, small AWAC planes and other radar devices of the Air Force, balloons and so on, to detect aircraft that might be involved carrying drugs.

In addition to that, planes are being made available to the Customs service for the pursuit of such aircraft, and fast-moving Army helicopters are being used by the Drug Enforcement Agency and the Customs in order to pursue those small aircraft right to the place where they set down in secluded airfields.

I would be very much interested in and dedicated to expanding that capability and making sure that it was employed in those areas where analysis shows there is a great deal of drugs coming in. I believe the Mobile Corridor is already receiving such attention, but I know it would be my purpose to make sure it did.

Senator **Heflin**. Another area that is always of concern is the issue of antitrust.

What are your plans concerning the Department of Justice and the enforcement of the antitrust laws?

Mr. **Meese**. Senator, the Department and I would be certainly committed to vigorous enforcement of the antitrust laws, particularly targeted at those types of activities that tend to restrain competition, such as price fixing, bid rigging, market allocation, output distributions, the types of things that do impede fair competition.

Senator **Heflin**. The decision of the Justice Department to block the Republic Steel-LTV merger, despite the deeply troubled nature of the steel industry, stands in sharp contrast with the Federal Trade Commission's decision to permit two of the world's three largest automobile companies, General Motors and Toyota, to engage in a joint venture.

How do you reconcile this apparent inconsistency in antitrust policy?

Mr. **Meese**. Senator, in the case of the steel companies, that is presently pending before the Department. The final decision has not been reached, and it is my understanding that discussions are now being held between the Antitrust Division and the respective steel companies based upon a new proposal that is being presented to the Department. So it would be improper for me to comment on that until later when if confirmed by the Senate, I would have the opportunity to go to the Department and learn all of the factors that are involved.

I wish to say, however, if I may, that I think this demonstrates the type of case in which there has to be a coordination of all of the agencies of the Federal Government that are involved in these matters, so that the policies of the Justice Department are well coordinated with others, such as Commerce, the U.S. Trade Representative, and the like.

Senator Heflin. Do you think that consistent standards should be followed during an administration concerning antitrust enforcement?

Mr. Meese. Yes, sir; I certainly do. As a matter of fact, it was this desire for consistency that gave rise to the promulgation for the Antitrust Division in 1982 of merger guidelines. These provided some degree of consistency for corporations contemplating mergers or other similar types of combinations, so they would have some understanding of the policy of the Department and the basis for that policy.

It is my understanding that the Department is presently engaged in revising those guidelines during 1984, based upon experience with the guidelines over a 2-year period.

Senator Heflin. The Supreme Court in a recent decision held the legislative veto unconstitutional. Since that decision, there has been committee efforts to formulate a workable and constitutional substitute for the legislative veto. Currently Senator Grassley and Senator Levin have introduced Senate provisions concerning this issue. Senator Grassley has proposed an amendment to the regulatory reform bill presently pending in the Senate which would require affirmative action by Congress to pass a joint resolution of approval for major rules and a joint resolution of disapproval of all other rules.

Under the Levin proposal, Congress must pass a joint resolution of disapproval to prevent a rule from becoming effective.

Would you give us your views about what you think the position should be for Congress concerning the review of decisions made by administrative agencies and executive departments?

Mr. Meese. Senator, pursuant to the *Chadha* v. *INS* decision, which you alluded to and which addressed the legislative veto and indicated that the formulation of that veto in previous statutes was constitutional, I would think that the major item that Congress would have to include in either type of legislation, such as you describe, would be a faithful adherence to the presentment clause; thus, after either type of resolution by the Congress, the measure would be presented to the President for either his signature or veto, and in the latter case it would be returned to the Congress for appropriate action.

Senator Heflin. Mr. Meese, there has been criticism of your participation in the reorganization of the U.S. Civil Rights Commission.

What is going to be your policy if you are confirmed as Attorney General concerning the overall enforcement of civil rights in this Nation?

Mr. Meese. Senator, my policy, if confirmed, would be to have vigorous enforcement of the civil rights laws of this country, to have a great deal of communication with affected parties and with organizations dealing in this particular field, and to present a picture to the American people of a Justice Department that, on behalf of the people and the Federal Government generally, has as a top priority a major interest in making sure that the civil rights of all citizens are properly protected.

Senator Heflin. A general trend among States has been to separate the Governor from the attorney general. That separation has brought about in a number of States the election of the attorney general separate from the Governor of the State. Consequently, the basic concept is that the attorney general's first obligation is to the people. The duties and responsibilities of the attorney general's office are such that it is difficult for him to serve in effect two masters, a Governor and the people.

We do not have that situation in the Federal Government. This, of course, would require a constitutional amendment if you ever were to make the Attorney General of the United States an elected official. There has been an effort in the Senate, as I believe Senator Metzenbaum outlined in his opening statement, in which, if there was a past history of close connection between a President and a proposed nominee for the position of Attorney General, the Senate would have passed a law to have prevented the close adviser to the President from a campaign basis from serving. That, of course, did not become a law. It is not binding for the President. Therefore, it is every individual Senator's duty to evaluate a nominee and exercise the constitutional responsibility of advise and consent. If a nominee's close relationship with a President is to be given serious consideration and whether it makes the difference in a vote of affirmation or for confirmation; it is the duty of the Senate to investigate this issue.

If you are confirmed, and there are those responsibilities that arise, which are obviously owed to the people first rather than to the Chief Executive of the Nation, do you feel that you can develop some guidelines to make the determination, and then do you feel that you can exercise the independence necessary to do your duty to the first master, which is the people?

Mr. **Meese**. Yes, Senator; I do. I think that guidelines are a very good way to ensure that this proper conduct is maintained and that there is a full understanding by other portions of the executive branch and by the Department of Justice, as well as confidence on the part of the people. I have no doubt whatsoever as to my ability to exercise independent judgment on those matters when there is a possibility of conflict between those two responsibilities.

Senator **Heflin**. That is all the questions I have at this time.

The **Chairman**. All right, Senator, thank you.

The distinguished Senator from Utah.

Senator **Hatch**. I will still reserve the balance of my time

The **Chairman**. The distinguished Senator from Wyoming, Senator Simpson.

Senator **Simpson**. Thank you, Mr, Chairman.

Still there.

Well, I have been hearing some of the questions and I think you are making every sincere effort to respond. That is good. That is what we would expect. It is interesting to hear the discussion about your home and your home away from home, and the things that happen to all of us as we come here, as we try to keep a home in our State where we are from. Certainly, we who are elected almost get to a point where you have to keep a home where you are. I was raised in Wyoming, and I loved having my home in Cody, WY, and I will have it and keep it because the interest is 6 percent, and I return there, and when I am through with this job, I will return there, whether voluntarily retired or involuntarily retired.

But what I am saying to you is if you have this mysterious force or awesome power, that you could have extricated yourself from all this heavy debt, could you not, with these marvelous ties that you have with the world and the community—surely you could have done better than this, Ed?

Mr. **Meese**. Senator, I am afraid I do not have any special force nor did I receive special consideration. I think it is for the purpose of maintaining loans that most financial institutions try to work with their clients, particularly clients that have been with them a long time and in whom they have confidence. In this case, at all times during the period in question, the loans by the institution were fully secured by ample collateral in the home itself.

Senator **Simpson**. I am sure they treated you like any other debtor-creditor in that relationship. But if they had not had proper security, they would not have given you the money.

Mr. **Meese**. Yes, sir; that is correct.

Also I think it is important to point out that their extension of credit was well justified when all of the loans were in fact paid back, when the house sold in September of 1982. I might say, if I could, that during that period of time they amassed quite a bit of interest, so it was a good business deal for them as well.

Senator **Simpson**. Did I not hear the figure this morning that you paid $41,000 or $43,000 in interest?

Mr. **Meese**. Yes, sir.

Senator **Simpson**. It is fascinating to me to refer to a sinister network that had not paid off one whit for you. I do not know how it could be that good. I guess I missed something in the process. I am sure that you—what was your last salary as an attorney in your other life?

Mr. **Meese**. Senator, my adjusted gross income for 1980 was somewhere in the neighborhood of over $90,000.

Senator **Simpson**. Well, at least you know, I think, that those of us who have done the two home route and former mortgage and the new mortgage can understand that kind of thing, and the college student and the high school student and this place, the reality of that is understood by most logical thinking Americans as the reality of this place. A $60,000 salary—certainly I make $72 and that is more than adequate, at least to the people of the United States who make so much less than that. And I feel privileged to be here. So there is lots to it. But to make something sinister or mysterious, as if you were using some awesome string pulling—I guess it was like me, I published my net worth, and my opponent said if that is all the money he has made, you do not want to elect him to anything. I see that same type of similar thing here.

You have to show me where the doomsday part of it comes. I have missed that so far

Let me ask you a couple of questions that are important to me and provincial, things that I do in this place.

Your predecessor, William French Smith, or the one that you will succeed, and you will, I found him to be an extraordinary person, a very fine gentleman, and he helped me. Without his assistance, I never could have moved a measure known as the Immigration Control and Reform Act, which is the most political no-win thing I have ever been involved in, I can assure you, filled with mountains of emotion, fear, guilt, and racism, and it is a nice project to be involved in.

But, however, he has been, and did furnish me some remarkable assistance, as did his senior personnel in the Justice Department, the Vice President, George Bush, more than helpful, the President himself, and I know that that issue is a tough one for a Californian. That, I have learned in immigration reform.

As you know, we have passed the legislation twice with the help of a bipartisan approach. My ranking member is Senator Kennedy, and he was of extremely fine assistance in the passage of that. He had his own doubts and expressed them beautifully, but it has moved on and is in the House where I think it will come up this month. The Speaker has indicated that and he has never gone back on his word in person to me.

So my question is, this is awaiting floor action in the House. Admittedly, a tough issue for all Californians, with the unions, the growers, the Hispanics. I am well aware of that.

But what are your views on the immigration reform legislation and how do you feel about that?

Mr. MEESE. Senator, I would follow the actions of Attorney General Smith, if confirmed, in giving full support to the immigration legislation that you and Congressman Mazzoli have sponsored, and which has received and will continue to receive as far as I am concerned the full backing of this administration.

Senator SIMPSON. Is there any evidence in your mind that this President would veto such a measure on immigration reform if it were not an absolute budget buster?

Mr. MEESE. No, sir, no evidence whatsoever and no indication. I think the President feels, as I do, that you and your committee and the other persons you have named have done an outstanding job of wrestling with a very difficult problem that has been almost immune to legislative resolution for many years. Because of the quality of that legislation—providing, as you point out, it is not a budget buster, and there is no reason why it should be—I think the President would be very proud to sign that legislation, and I would certainly support him in doing so.

Senator SIMPSON. Certainly it is not our intent to have some kind of a measure that will cost this country $11 or $12 billion, and that cannot be, if in truth there are only 2½ million illegals in the United States, and that is a census figure. You cannot have it both ways. If there are 2½ million and they come here for one reason, and that is to work, then they are not on the support rolls of the United States and it cannot possibly reach that figure. But I have chatted with David Stockman and will continue that dialog in that area.

At this point, I might say in connection with immigration reform, one of your inquisitors, Senator Metzenbaum, has been of exceedingly fine assistance to me in that measure, and has spoken on it eloquently in and out of my presence, and it is something that is not a partisan issue. I hope that the President will give it every support, and if it comes out, and we are in the conference where we have a figure that can handle what we need to do to support these unfortunates, and those we legalize, I want to make sure that commitment is there from you.

Mr. MEESE. Yes, Senator, that commitment is there in support of the legislation with conditions that you just stated, and the commitment is also there for the fair, evenhanded and effective implementation of the legislation, if I am confirmed, as would be the duty of the Attorney General.

Senator SIMPSON. I believe the Immigration and Naturalization Service under Al Nelson, a person you well know, and a person I have come to know, has never been in finer hands, and with you as Attorney General, if the legislation should pass, and Al Nelson as Immigration and Naturalization Service Commissioner, that we can handle the legalization program. We can handle the forged documents. We can handle the things we know we are going to have to deal with.

I appreciate that very much.

I thank you, Mr. Chairman, Acting Chairman.

Senator LAXALT [presiding]. I thank the Senator.

I notice that we have a rollcall vote on.

Senator Biden, I think it would be in order if we stand in recess until 4 o'clock.

Senator BAUCUS. With the committee's indulgence, I will not take my full time. I have a few points I want to make. It will take only about 5 minutes.

Senator LAXALT. Is that satisfactory with the rest of the members?

Please proceed then, Senator Baucus.

Senator BAUCUS. Mr. Meese, I do not know if you have been to Montana or to the West or to some of the rural States in our country, particularly in the West. We in the Rocky Mountain States have a very close affinity with California but we do not regard ourselves as Californians. We have vast distances to travel, and the whole field is much different obviously from the State of California. The State of Montana and other Western States tend to depend on grain, agriculture, depend on forest products industry, depend on coal for their economic livelihood, and that obviously means that States in our part of the country depend very heavily on the railroads.

The railroads have written many pages of history, as you know, and they continue to write pages of history in some of the more expansive States in our country, including the State of Montana.

Through the years, Congress has attempted to help railroads by the passage of the Staggers Act and amendments to the Staggers Act which essentially deregulate the railroad industry. Although it has a possible beneficial effect not only on the railroads but in urban parts of the country, regrettably it has had a disadvantageous effect on vast rural States in our country. For instance, the B&N in the State of Montana has become the only railroad in the State of Montana. It now abandons branch lines. It raises rates way above what it charges other shippers in other parts of the country—and they will admit it—and they do so because they have a monopolistic position in our State.

I am wondering, as Attorney General, what you would do with respect to monitoring the anticompetitive effects of railroads in parts of the country where they truly have a monopolistic position? Could you give me your philosophy if you are confirmed as Attorney General what you would do from an antitrust point of view to make sure that railroads in a monopolistic position do not take advantage of that position?

Mr. **Meese**. Senator, once a railroad due to past actions has obtained a monopolistic position, there are probably considerable limits on what an Attorney General can do. I think it is proper to monitor the situation, as you suggest, within the limits of the law so that present and future actions that might be restrained by the law could be prevented from occurring.

Obviously the Interstate Commerce Commission has some jurisdiction in the matter as far as the handling of this type of a utility once it has obtained a monopoly status.

Existing law should be utilized to make sure that no violations of law occur because of the monopolistic position.

Second, the lesson learned from the experience you have outlined could be applied in future actions by the Department as combinations or mergers or other changes are considered in the future. But I can assure you that this is an area in which I would expect the Antitrust Division to be very alert to monitor the situation, since the presence of a monopoly demonstrates a propensity toward noncompetitive behavior.

Senator **Baucus**. I wonder if you could take two efforts? Certainly this is more of a legislative question than it is a judicial question. That is, if the present law and the Staggers Act allow railroads—particularly the Burlington Northern—to act anticompetitively, it is up to Congress to change the law. Nevertheless, I would appreciate it very much, after you are confirmed, and I am sure you will be, if you would undertake a study to see what actions the Department can take under current law to more aggressively prevent monopolistic operations of railroads in the country where in fact they do have a monopolistic position. And, second, after you have undertaken that undertaking, you then recommend what legislative changes you think are appropriate and necessary in order to allow the Justice Department or any other appropriate law enforcement agency to bring the appropriate actions to prevent monopolistic operations of railroads, particularly in those parts of the country I have addressed.

I would appreciate if you would have that back to the committee, say, in 90 days after your confirmation. Are you prepared to do that?

Mr. **Meese**. Senator, I would be very pleased to commit such a study and also within 90 days to bring such recommendations as would be possible to accumulate by that time. I would look forward to working with you and this committee on that subject.

Senator **Baucus**. I thank you very much.

We have a vote in progress.

I thank the chairman.

Senator **Laxalt**. I thank the Senator.

We will stand in recess until 4 o'clock.

[Recess.]

The **Chairman**. The committee will come to order.

The distinguished Senator from North Carolina.

Senator **East**. Mr. Chairman, I appreciate the opportunity to be a part of this hearing. I regret that I was unable to be here this morning. I will take a few minutes now to explain my position on this nomination. If there is no objective, I ask that my written statement be included in the record at the conclusion of my remarks.

I commend the President for making an outstanding nomination.

In terms of academic background, Mr. Meese is a graduate of Yale University and the law school of the University of California at Berkeley. He possesses an outstanding academic background.

There is no need, nor sufficient time, for me to review all of the practical experience that he has had in the world of law generally, and in law enforcement particularly. It is extensive, and it will be of great value to him as he assumes his new position as the Attorney General.

I find Mr. Meese's personal character and integrity, not only in the public arena, but personally, to be beyond question.

In my judgment, Mr. Chairman, Mr. Meese will bring great credit to the Department of Justice, to himself, to this administration, and above all, to the quality of law enforcement in this country. Ultimately, I think that this will reflect well upon our Nation as a whole.

So I do commend the administration for this nomination. I fully intend to support it here on the committee. And I look forward to defending it on the Senate floor to the very best of my ability.

Before concluding my remarks, Mr. Chairman, I would like to press upon the Attorney General-designate one important thought. I am not asking him even to respond to it. It is particularly sensitive, and I am not sure he can respond to it.

My concern is with regard to the U.S. Supreme Court.

We have suffered in this country from a Supreme Court that has involved itself unduly in what used to be fundamentally the policymaking role of the legislative branch. It has taken away from Congress and the State legislatures such sensitive issues as abortion, school busing, and school prayer. It has injected itself into these highly sensitive areas of public policy. It has nationalized these issues. It has polarized them. It has caused this Congress to be bogged down in issues in which we ought not to have to be involved. It has warped the legislative deliberative process in this country. Now, instead of States appropriately dealing with these matters, or instead of Congress appropriately dealing with them, we are forced to accept, by *fait accomplis,* edicts by an overly active Supreme Court. Then we must go through the long, laborious process of trying to change those decisions through the amending process. This makes a mockery of representative government and of the notion of a Republic. I think that the Founders of this country, from across the political spectrum, would be appalled at the abuses that the present Supreme Court, with a few exceptions, has inflicted upon this country in recent years.

The Court has abused its role. It has caused constant trouble, and consternation, and divisiveness here in the legislative branch.

My point is this. I hope that Mr. Meese, will bring to the attention of the President the importance of stressing this issue in the upcoming campaign. The President will be making nominations to the Supreme Court in his next term. If we do not change the direction of this Court, we are going to continue to find the Congress bogged down, week after week, month after month, and potentially year after year, in such highly sensitive, emotional issues as abortion, busing, and prayer. These issues, as a general rule, ought to be dealt with by the State.

An overly active Supreme Court has created this litigious society, which has inundated the court system, and the Supreme Court itself.

So, I would hope that in his role as the Attorney General, and as a close confidant and counsellor to the President, that Mr. Meese would consider the political, judicial philosophy of those appointed to the U.S. Supreme Court.

I regret that it has come to that. But the Court has brought it to that. It has insisted upon becoming a major policymaking entity in the United States. It is the high court of legislation on abortion. It is the high court of legislation on school prayer. It is the high court of legislation on a broad range of issues that at the founding of this country were to be left to State legislative bodies or to the U.S. Congress.

I feel very intensely on this, obviously, Mr. Chairman. I think the American people are with us on this issue. I hope that the President, with the good counsel of his Attorney General-designate, will bring this to the attention of the American people.

I regret that the matter has been politicized, but if the President's political opponents succeed in defeating him, we will be getting more of the same, from the Supreme Court, for the balance of this decade, and the balance of this century, to the great agony of the Congress and of this committee in particular.

I commend the President for his appointment of Edwin Meese to be Attorney General. I have the suspicion that he would recommend to the President filling Supreme Court vacancies with nominees who know, and respect, the proper, legitimate role of the Court under the concept of separation of powers.

The CHAIRMAN. I just want to say a word there.

I am in accord with what you have said. This is not the place to debate it. But I want to say this.

A few years ago the Supreme Court went into the field of insurance. The word insurance is not found in the Constitution. It is a field that has never been delegated to the Federal Government, and the Congress immediately took action to take that field away from the Federal Government, and give it back to the States, where it belongs.

I think the same principle applies to these other matters that you referred to. They went into the field of abortion, and they are still in that field. Some of us are trying to get it back to the States now. The word abortion is not found in the Constitution.

The matter of school busing is purely a State matter. The matter of State prayer is a matter for each local community, and each State.

At any rate, those are matters that have been taking a lot of time of the Congress every year. They should be left to the States, but those matters have to be taken up at another time.

We thank you for your remarks.

[Prepared statement of Senate John P. East follows:]

STATEMENT OF SENATOR JOHN P. EAST
SENATE COMMITTEE ON THE JUDICIARY
ON THE
NOMINATION OF EDWIN MEESE III
TO BE
ATTORNEY GENERAL OF THE UNITED STATES
MARCH 1, 1984

Mr. Chairman, I thank you for this opportunity to make a few opening remarks with regard to President Reagan's nomination of Edwin Meese III to be the next Attorney General of the United States.

I want to commend the President for this fine nomination. Mr. Meese has the kind of multi-faceted background in the law that will serve him well at the helm of the Department of Justice. The graduate of one of the finest law schools in the nation, the University of California at Berkeley School of Law, he has been a county prosecutor in California. He has been the chief legal adviser to the Governor of the nation's largest state. He has been a law professor. He has been an attorney in private practice. And he has been the Counsellor to the President of the United States.

As one who supports Senate confirmation of the Meese nomination, I wish to emphasize two aspects of the nominee's background and qualifications that I believe will be of particular value to him as he undertakes his new position as Attorney General.

First, the central responsibility of the Attorney General is to be the chief law enforcement officer of the United States government. In that role, I am certain that Mr. Meese will draw upon his nine years of service in the office of the Alameda District Attorney in California. First as a law clerk, and then for eight years as Deputy District Attorney, Mr. Meese was on the "front lines" of law enforcement activity. That experience will be invaluable to him as he supervises the work of the Criminal Division of the Justice in general, and the corps of Federal prosecutors, the United States Attorneys, in particular.

Second, the other primary role of the Attorney General, as a senior member of the Cabinet, is to serve as one of the principal advisers to the President. He is, of course, the principal legal adviser to the Chief Executive. In order to be of maximum value to the President in this role, it is important for the Attorney General both to enjoy the full confidence of the Chief Executive and to be thoroughly familiar with the presidential philosophy and goals that animate the Administration's overall policies.

Mr. Meese's background ideally suits him to perform this role. He first joined the staff of then-Governor Reagan in Sacramento as his Legal Affairs Secretary in 1967. In 1969, he was promoted to the level of the Governor's chief of staff, where he served until Mr. Reagan left office in 1975. In 1981, when Mr. Reagan moved into the White House, Mr. Meese became the Counsellor to the President. In short, there can be no doubt that Mr. Meese has earned the full confidence of President Reagan, and that he is fully knowledgeable about his Administration's philosophy and policy goals.

In conclusion, Mr. Chariman, I wholeheartedly support this nomination. Edwin Meese is uniquely well-qualified for the position of Attorney General of the United States. I expect that these hearings will more than prove that point to all objective observers, both on our Judiciary Committee and in the public at large. The Committee should act promptly in confirming him.

Thank you.

The CHAIRMAN. The distinguished Senator from Vermont.

Senator LEAHY. Thank you, Mr. Chairman.

Mr. Meese, I apologize for not having been here this morning. Unfortunately, the Appropriations Committee was meeting at the same time. Secretary Schultz was before us discussing the administration's request for foreign aid, and because of the number of increases there, I think most of us from that subcommittee had to be there, and hear how—knowing of the chairman of this committee's strong interest in foreign aid, I know he would want me to be there, and how much the administration wanted this.

The CHAIRMAN. Are you sure about that?

Senator LEAHY. Maybe I was mistaken.

It is an awkward moment in history when we lawmakers have to meet to examine the qualifications of a person selected to apply and enforce our principal product—the laws of the United States. And that is the case no matter whether we have a Democratic or Republican administration.

We in the Congress have a lot at stake in the selection of an Attorney General, and I think each Senator, both sides of the aisle, have said that one way or another today.

Whether our civil rights are delivered equally under the law or not, depends on the person pursuing that goal in the United States, and that is the Attorney General. Whether we have open government, often turns not only on the skill, but really on the spirit of the Attorney General. Whether free expression flourishes or diminishes in quality will reflect the wisdom of the people sitting at the head of the Justice Department that have to weigh the vital interest of national security, as well as the equally vital interests of the first amendment.

In short, although the Supreme Court has the last word on what our laws mean, the Attorney General often has the first word, and the first word, so many times, determines the last word. The Attorney General sets legal policies for the Government, and by an example, he sets moral and political policy as well.

The success of much of the work of Congress always depends on who is sitting at the head of the Justice Department.

So in addition to fulfilling our congressional mandate to consider confirmation of major Presidential appointments, in another sense, we have kind of a proprietary interest in what you are going to be doing if you are confirmed. So the agenda is a crowded one.

I intend to save most of my time for questions. Those questions, as I have tried to let you know, and the White House know, will track my interest and concerns I have individually as a Senator.

I think the Department of Justice has no higher duty than that of allowing free expression to flourish. The first amendment is really our greatest amendment, in my estimation, in this country. It is the one that keeps us free, and will always keep us free as a country.

I think that the Department of Justice is the only agency of government that by itself, by itself, can insure open government, and make the right to know a practical reality. It is the only agency of Government that can guarantee the privacy of those people who serve the Government will not be violated, and that limitations on that privacy will be tolerated only in cases where the needs of national security have been clearly identified.

It is the one agency that can guarantee our right of free speech. I feel secure that as a people, the American people are never going to lose our basic freedoms to a violent revolution, but, instead, if we are going to lose them, it is going to be by attrition, over time, through inattention, through misjudgment, and we are sworn to prevent that loss, all of us, as guardians of the Nation's laws.

If you are confirmed, Mr. Meese, you are going to be equally bound to use every means at your disposal to insure these values are safe in your tenure, to pass them on to the next Attorney General, and in an unbroken legacy, to he or she that will have to do it to the next Attorney General.

I know from my meetings with you that you will be forthcoming in your answers, so let me ask a few questions. They will be aimed primarily at the policy decisions with regard to first amendment activities and open government that the administration has taken since coming to office.

I think a number of them you may have been involved in.

My questions will focus on those actions which you had firsthand involvement in. If you did not, please say so, and if somebody else wants to ask you questions, they can. But I want to know the ones you had firsthand involvement with.

So if I could get, basically, a yes or no answer to just the question of whether you were involved, then we will go into another round of what you did.

As I said, I do not want to go into questions just on philosophy if there are things you were not involved in.

So, were you involved with the formulation of, or the decision to place a moratorium on certain portions of the National Security Directive, which deals with unauthorized leaks of classified information?

Mr. MEESE. Yes, sir, I was.

Senator LEAHY. Were you involved with the formulation of Executive Order 12333 on intelligence activities?

Mr. MEESE. Yes, Senator, I was.

Senator LEAHY. Were you involved in the formulation of the administration's package of amendments to the Freedom of Information Act?

Mr. MEESE. Not directly involved, but I was knowledgeable of it.

Senator LEAHY. Were you involved with the Justice Department's position which created a more restrictive standard for granting FOIA waivers?

Mr. MEESE. No, sir, I was not.

Senator LEAHY. Were you involved in the formulation of proposed Justice Deparment and OMB guidelines which treated the Privacy Act as an information withholding statute?

Mr. MEESE. I am not sure I understand exactly what regulations you are talking about, Senator. You say OMB regulations?

Senator LEAHY. OMB guidelines.

Mr. MEESE. OMB guidelines?

Senator LEAHY. Formulation of a proposed Justice Department and OMB guidelines that would take the Privacy Act, and treat it as an information withholding statute.

Mr. MEESE. To the best of my knowledge, I was not involved in that.

Senator LEAHY. Were you involved with the formulation of the proposed revision of OMB circular A-122, which restricts Government contacts by Federal grantees?

Mr. MEESE. Yes, sir.

Senator LEAHY. Were you involved with the formulation of the Smith guidelines on general crime, racketeering enterprises, and domestic security terrorism investigations?

Mr. MEESE. I was not involved in the formulation of the guidelines. I am somewhat familiar with the process and the subject of them, but I was not involved in the formulation.

Senator LEAHY. Were you involved in the decision to place a propaganda label on three Canadian films dealing with acid rain and the nuclear weapons freeze?

Mr. MEESE. No, sir.

Senator LEAHY. Were you involved in the formulation of Executive Order 12036, which creates new standards for classifying Government documents?

Mr. MEESE. Yes; if that is the correct number on that Executive order. I was familiar with and was involved in the formulation of the Executive order that did that.

Senator LEAHY. I am pretty sure we have the right number—I think we are both talking about the same one.

Mr. MEESE. Yes, sir.

Senator LEAHY. Were you involved in the decision to adopt a passive enforcement process as a means of identifying which individuals who had failed to register for the draft, to be prosecuted for that failure?

Mr. MEESE. No, sir; I had no part in determining the prosecution guideline for draft registration evaders.

Senator LEAHY. Then let me make sure we understand that one properly.

The President, as I recall, during his campaign, had said that he would abolish the draft registration program.

Mr. MEESE. Excuse me, Senator. Perhaps I misunderstood you. You say passive measures?

Senator LEAHY. Yes.

Mr. MEESE. I think I did not understand what you said. As passive, meaning withholding benefits to those who were not registered, yes, I was involved with that.

Senator LEAHY. Now, when the President decided to go ahead with draft registration, as I understand it, he assigned to the Military Manpower Task Force the task of reporting a course of action dealing with registration problems, and you were a member of that task force, were you not?

Mr. MEESE. I was a member of the task force. The President had initially assigned to the task force the responsibility of recommending to him whether or not we should go ahead with registration.

Senator LEAHY. I understand that at one of the meetings, its seventh meeting, in fact in April of 1982, draft registration problems and enforcement were discussed.

Mr. MEESE. Yes; it was discussed briefly at that meeting.

Senator **Leahy**. At that time, the only enforcement system was one where the Government did nothing to search out nonregistrants, but referred to the Department of Justice the names of those reported by someone else, for example, a neighbor who says my son registered, the neighbor's son did not register, and that is about the only way people were searched out. Is that correct?

Mr. **Meese**. I believe, sir, at that time, the Solomon Act was already on the books which denied certain benefits, although I may be incorrect as to the exact time of that.

Senator **Leahy**. Were you the military liaison officer for the Director of the Selective Service to the Department of Defense?

Mr. **Meese**. Yes, sir.

Senator **Leahy**. And was that in your Reserve capacity as a member of—a colonel in the Reserves?

Mr. **Meese**. Yes; it was, Senator.

Senator **Leahy**. Did you feel that the Justice Department was ending up with very selective prosecutions of those people who did not register for the draft?

Mr. **Meese**. I really did not make any judgment on that subject, nor have I. I did not know the basis for selecting who was to be prosecuted or the facts of the individual cases.

Senator **Leahy**. Well, did you pursue or recommend an effort to use data matching to find out who was refusing to—who may be refusing to register?

Mr. **Meese**. I do not know whether I suggested it or recommended it. I thoroughly approved of it and assisted in facilitating data matching.

Senator **Leahy**. Did you suggest using the IRS as well as Social Security in that area?

Mr. **Meese**. I do not believe I suggested that. I believe it was stated by people who are more knowledgeable on the law concerning this matter that those were avenues that were available by law to the Selective Service System. I believe it came from the Selective Service System as to where they might obtain data.

Senator **Leahy**. How did you feel about using IRS as well as Social Security?

Mr. **Meese**. I believe I probably raised the question in our discussions whether this was permitted by law. And when told by the Selective Service experts that it was permitted by law, I was in approval of it.

Senator **Leahy**. Did you have any question in your own mind that might raise invasion or privacy questions?

Mr. **Meese**. No, sir; inasmuch as this involved violations of the law

Senator **Leahy**. Were you personally for or against draft registration?

Mr. **Meese**. Initially I was against draft registration. I was persuaded through the evidence that was presented before us that it was something that would assist in a mobilization in a time of national emergency and, from that time on, was in favor of it.

Senator **Leahy**. Were you aware that the draft nonregistrant prosecutions were to be felony prosecutions?

Mr. Meese. No, sir; I do not believe originally, at the time of the recommendations to the President on registration, I was. I have since learned that, however.

Senator Leahy. Were you aware that the Government would not actively look for violators, but would take enforcement action against only those reported or self-selected?

Mr. Meese. No, sir; I did not know that, nor do I at the present time.

Senator Leahy. So you were not aware that the person who is apt to be selected was one that had written or advised the Government in some way they would not register perhaps, for example, for moral or other, for political reasons?

Mr. Meese. I do not believe I knew on what basis prosecution actions would be instituted.

Senator Leahy. You were not aware that the passive enforcement system would catch basically those that were outspoken in their defense to the draft registration program? In other words, were you aware that the Justice Department was not going to actively seek people, but only get those people that were reported or came to their attention by their own actions?

Mr. Meese. No, sir; I was not aware of that then, and I am not aware of that now.

Senator Leahy. Are you aware to date there have only been 16 such prosecutions?

Mr. Meese. I do not know the exact number, but from what I know informally, that sounds about right.

Senator Leahy. In a couple of these proceedings, have your docoments and other Government documents been requested in support of a claim of selective prosecution?

Mr. Meese. They were requested; yes, sir.

Senator Leahy. Were you willing to provide those documents?

Mr. Meese. This decision was not made by me, but by the Department of Justice based on what was appropriate in the case.

Senator Leahy. Was there a demand for your testimony by the court in at least one case?

Mr. Meese. I believe there was in one case, and again, I was advised by counsel for the Federal Government that it would be improper for me to appear.

Senator Leahy. Did the counsel ask you directly or indirectly how you felt about testifying?

Mr. Meese. No, sir; I do not believe they ever did.

Senator Leahy. How do you feel about testifying?

Mr. Meese. I think in regard to the testifying, as far as the court is concerned, I would have to be guided by counsel concerning whether it was proper for me as a Federal official to appear or not.

Senator Leahy. Well, suppose you found that not testifying meant that the case could lead to dismissal. How would you feel about that?

Mr. Meese. Again, it is a matter of what the law is as to whether I should testify or not. But I would be unhappy if, because of my inability to testify, a judge would take it upon himself to throw a case out.

Senator Leahy. As Attorney General, what type of draft resister prosecutions would you propose?

Mr. **Meese**. Senator, are you referring to draft resistance or draft registration resistance?

Senator **Leahy**. Draft registration resistance. I know we do not have a draft now so it could not be draft resisters, but draft registration resisters.

Mr. **Meese**. For those who fail to register, my personal preference would be to amend the law to provide for a misdemeanor offense, which I think is more appropriate to the failure to register rather than the present felony offense.

Senator **Leahy**. How would you select who was going to be prosecuted?

Mr. **Meese**. I do not have enough actual information as to the process within the Department of Justice for doing this. However, with that caveat as to my lack of total knowledge as to either the process or the resources available, I would think that the idea of selective prosecutions based upon people identifying themselves would not be a limitation I would have on prosecutions.

There would be a more active process so that fairness would be maintained in the prosecutions to a greater extent, not only fairness itself but also the appearance of fairness.

Senator **Leahy**. You do not think it would be fair or give the appearance of fairness if primarily those who had been vocally opposed to draft registration were the only ones prosecuted?

Mr. **Meese**. I do not think it would be unfair, but I think it would be far better to have additional steps taken as well.

Senator **Leahy**. If it was limited to those vocally opposed do you think it would give the appearance of unfairness?

Mr. **Meese**. Some people might take it that way.

Senator **Leahy**. How do you feel?

Mr. **Meese**. I do not think it would be unfair; no, sir.

Senator **Leahy**. And you yourself do not think it would give the appearance of unfairness?

Mr. **Meese**. Yes; I think it might give the appearance of unfairness. That is why I do not think the prosecution should be limited to that.

The **Chairman**. Senator, I understand your time is up.

Senator **Leahy**. Thank you, Mr. Chairman.

The **Chairman**. The distinguished Senator from Iowa.

Senator **Grassley**. Thank you, Mr. Chairman.

Mr. Meese, I appreciate very much the great amount of time you must put into this hearing and thank you for answering these questions. I have a topic that may not appear to be controversial and hopefully is not. This topic may be in the public's mind but is not discussed as often as so many things you deal with. However, it is one that affects you, me, any parent, really any person. It deals with the fact that recently the Senate and the House passed legislation which I introduced together with Senator Specter, to conform the Federal Code to the Supreme Court's decision in *New York* v. *Ferber*. As you might recall, the outcome of that decision was to remove the requirement of legal obscenity from child pornography statutes, making it easier to prosecute offenders and to protect our children.

In the last decade, child pornography has proliferated throughout the country and the prosecution rate has not kept pace. I would hope that the prosecution of child exploiters become one of the Department's success stories under your leadership, and I would appreciate any contrary comments you might have if you have any disagreements with that view.

Mr. **Meese**. There are no disagreements whatsoever, Senator. I agree with you that this is a major problem, and one of the growing problems is the exploitation of children.

Senator **Grassley**. I would next like to turn to the general subject of regulatory reform, and then I am going to follow it up with some questions on the subject of legislative veto, and it is my understanding, even though I was not here, that Sentor Heflin also discussed this point with you, at least the point of legislative veto.

First of all, I express the view I fear the administration is retreating to some extent from its commitment to regulatory reform. I see that demonstrated by the fact that the President disbanded the Vice President's Commission on Regulatory Reform and the lack of interest that the Department has shown this year. It appears to me that a victory has been declared and that the administration has prematurely retreated from this issue.

Do you believe the Department under your leadership, will make time for regulatory reform and be able to aid us on the Senate floor in seeing it through the Senate? It evidently was at one time a major objective of the administration.

Mr. **Meese**. Yes, Senator; I do believe the regulatory reform measure is an important measure. I would be happy to work with you and other members of the committee and of the Senate, as well as of the House, in trying to get this piece of legislation through.

I might point out, if I may, however, that the Vice President's Task Force on Regulatory Reform was not disbanded because of any lack of interest. It was disbanded essentially because its work, which was the initial cutting edge of defining the task of regulatory reform, had been accomplished. The task of regulatory reform was then put, on an ongoing basis, within the Office of Management and Budget for ongoing scrutiny and monitoring.

Senator **Grassley**. I hope that is the case, but public impression is when a lower level of bureaucracy is charged with the administration of a very important task like that and particularly because it does not get the visibility that somebody of the import of Vice President Bush could bring to the issue. I think that is the way it is read, and so a followup comment of mine would be that you would impress upon the President of the United States that issue is perceived, at least, in the public's mind, to have a lower level of importance within the administration. As an Attorney General, you could also help bring about some change of that perception.

My next point, would be in regard to the legislative veto, and, of course, you know last spring the Supreme Court held in the *Chadha* case that a one House veto over an immigration decision violated separation of powers, particularly because it did not have the President involved with an act of Congress.

My subcommittee of this full committee, the Subcommittee on Administrative Practice and Procedure, is charged with jurisdiction over the legislative veto and during the course of our hearings, a number of experts have stated that a joint resolution of approval, which, by definition, would involve the President, would be constitutional. I am interested in hearing your views on the constitutionality of this type of approval mechanism.

Mr. **Meese**. It is my understanding that such a joint resolution, which would be presented to the President for his signature or veto, would be constitutional, Senator.

Senator **Grassley**. Do you have any personal opinion upon congressional use of this type of approval mechanism as a substitute for the congressional veto?

Mr. **Meese**. Only that I think that the description that you gave would satisfy the holding of the Supreme Court in the *Chadha* case.

Senator **Grassley**. Mr. Chairman, I did not use all my 15 minutes. I do not anticipate using any more, but I would like to reserve the balance to preclude being cut out of the total 15 minutes. I would yield, let it go back to the chairman.

Thank you, Mr. Meese.

Mr. **Meese**. Thank you.

The **Chairman**. As I understand it, Senator, you are reserving the rest of your time?

Senator **Grassley**. If it is within the rules, I would like to.

The **Chairman**. All right. The distinguished Senator from Alabama, Mr. Denton.

Senator **Denton**. Thank you, Mr. Chairman.

Mr. Meese, I hesitate to continue to tax your endurance.

In part as a result of a long series of hearings held by the Subcommittee on Security and Terrorism on the Domestic Security Guidelines, the so-called Levi Guidelines, Attorney General Smith, your prospective predecessor, made changes to those guidelines which we refer to informally as the Smith Guidelines.

In my view, the changes did improve existing guidelines but we have not yet fully resolved the questions of gathering intelligence on domestic organizations that may present a threat but that are not currently engaged in violent criminal activity. In your view are we compelled to wait for the bomb to go off again or for more innocent people to be murdered as in the Nyack armored car robbery case before we permit the investigation of groups that advocate violent criminal activity?

Mr. **Meese**. Senator, I have talked with Attorney General Smith and also with Director Webster of the FBI on this subject, and I am informed by the FBI Director that it is his opinion that at the present time the guidelines promulgated by the Attorney General are adequate to afford a proper investigation of terrorists or potential terrorist activities, as well as other types of violent criminal acts.

I would, of course, monitor this personally, if confirmed by the Senate, to determine whether any changes might be necessary in the future.

Senator **Denton**. Perhaps the Director of the FBI and I disagree that things are perfectly OK at this moment. I would hazard the suggestion that we need to declare terrorism a Federal crime, and I could offer more justification than time permits for that suggestion.

I would also hazard the suggestion that we need exemptions to the Freedom of Information Act, similar to those recently legislated regarding organized crime, in the field of terrorist-related activity and foreign counterintelligence.

So I hope you have not developed a closed mind on that subject.

Mr. **Meese**. I will always be open to suggestions and for personal observations on those particular topics, Senator.

Senator **Denton**. You may not be aware that on February 28 the FBI and the Los Angeles Police Department did finally sign a brief memorandum of understanding on division of security responsibilities for the 1984 summer Olympic games.

I do not know whether you have been briefed thoroughly on this matter, but knowing the spectrum of your knowledge, I would imagine you have considerable awareness of it.

I would like your appraisal to the extent that you can comment publically on the importance of the security arrangements for the 1984 games and any particular thoughts you have on that subject.

Mr. **Meese**. Senator, I think that the importance of security to the 1984 Olympic games in Los Angeles is paramount, both as a national responsibility as well as a local responsibility there.

So I was very pleased, as you were, to see the memorandum of understanding being negotiated and signed between the Los Angeles Police Department and the FBI, which took place on Tuesday of this week.

There had previously been a similar memorandum between the FBI and the other law enforcement agencies in those jurisdictions surrounding Los Angeles.

It is my understanding that the relationships, plans, and coordination for law enforcement activity to preserve the security of the Olympic games is proceeding very well at the present time, and, of course, if confirmed I will spend a great deal more time on this particular problem.

I can assure you that it will occupy a major priority in the activities of the Justice Department, if I am confirmed by the Senate and given that position of leadership.

Senator **Denton**. In case you are unaware, we are going to conduct a hearing in LA on that subject on April 13, having conducted one here and transported out hundreds of people from LA and other areas, we will be going with three people out there to save some money.

The Subcommittee on Security and Terrorism has held many hearings which relate to the global aspects of terrorism. I had hoped and will continue to hope that the hearings would put into context for the American people the emphasis that the Soviet Union has placed on the training, logistical support, arms, and money that it supplies to terrorist organizations around the world directly and through surrogates.

Moreover, within the United States there are organizations that often propagandize for international terrorists and terrorism. Mr. Meese, how do you perceive that threat and the role, you may see for the Department of Justice in dealing with the domestic propagandist support apparatus for terrorist activities?

Mr. **Meese**. Senator, I do believe that it is a major threat. Obviously, terrorism, and state-sponsored terrorism particularly, is a growing threat to the entire world. Concerning the propaganda efforts you are talking about, I feel this is a very sensitive area because it requires a balance between the security needs of the Nation on the one hand and the first amendment freedom of expression rights of individuals on the other.

If there is a law being violated by those who are involved in this propaganda, such as if they are in fact agents of a foreign government or a foreign power and are failing to register or any of the other laws of that nature, then I think those laws have to be vigorously enforced.

If there is no violation of law involved, then I think the best way to combat that sort of propaganda is to expose it for what it is and to combat it with truth affirmatively on the part of the Federal Government.

Senator **Denton**. In general, Mr. Meese, I am led to believe that rather than active measures against terrorism in the United States or even passive advance measures such as putting up some of the blockading type devices we are around here, we need more preactive information. In other words, knowledge before the facts so that we can cut it off before the event becomes a demonstration, and it was in that context that I recommended the further exemptions to the Freedom of Information Act, and I shall be pursuing that subject with your Department rather vigorously.

I preface this question with an observation. I am on another subcommittee in which I am involved heavily with welfare programs. I believe you know personally that beyond that particular committee commitment, I have a personal commitment to try to bring together bipartisan congressional effort, over the years if need be, to look comprehensively at the need for welfare reform which produces compassion with efficiency.

I am dismayed by the truth of Dr. Thomas Sowell, the Ph.D. out at Stanford, who observes correctly that were one-third of the money which is appropriated for the poor to reach the poor, we would have no one left in poverty.

I have found that that generalization by that gentleman applies to many other welfare programs other than those trying to help only the poor.

I would welcome your participation and the Department of Justice in the month ahead as I endeavor to establish an informal nonpublic governmental effort to begin to identify those issues which we need to address.

When I say "nonpublic", I mean unpublicized, therefore, unpoliticized, something that will help do something about a situation which we cannot address too publicly in this election year. But I think it is a bad situation.

You have been treated critically, and this is the question, by much of the media for your free-wheeling discussions about how some of the people sleeping on the heating grates or standing in soup lines are not needy.

Some people, therefore, allege that you have no compassion or concern for the poor. I mentioned this in my opening statement. Will you describe your involvement with the successful bipartisan welfare reform proposals enacted in California during President Reagan's term as Governor and how your experience prepared you to play an appropriate role as Attorney General in the efforts that you might play in helping reform our Federal welfare system?

And it is my understanding that many of these initiatives in California were from Democrats and I would encourage any emphasis you might have on that point because I would like to see our effort bipartisan.

Mr. **Meese**. Senator, I was privileged in 1971 to participate in a bipartisan effort in California to reform the welfare program in that State. In the course of negotiations, in which then Governor Reagan personally participated over an extended period and which were then carried on with my responsibility being to lead those negotiations as to the detailed wording of the statutes, we were able to reduce the total taxpayer cost of the welfare programs in that State without, in any way, hurting those who were truly in need.

As a matter of fact, we were able to increase the grants for those who were in need by about 42 percent at the time. I think this was a very valuable experience because it showed once again that many of these things can be done at the State level, which seem to allude a national constitutency.

Senator **Denton**. Thank you, sir.

Although I know that you, like I, support the concept of legal services for the poor, I know that you are aware that the Labor and Human Resources Committee has amassed much evidence during the past year exposing misuse of Federal funds by local legal services grantees.

The Congress, however, continues to appropriate $275 million a year to Legal Service Corporation. Nonetheless, we must, in my view, actively develop other ways of providing necessary legal help to lower income individuals and families. We must also find a way to keep the Legal Services Corporation addressed to doing that which they are supposed to do.

What efforts do you think are possible through the Department of Justice to encourage and assist local bar associations and other private groups of lawyers at least to begin in their local communities to assist in the delivery of legal services to the poor.

Mr. **Meese**. Senator, I believe that the Department of Justice can utilize its position as an eminent legal authority within the country to espouse the responsibility of the legal profession, both generally throughout the Nation and in individual bar associations at the State and local levels, to take on this responsibility for legal services.

In fact, I have given a number of speeches throughout the country advocating this type of approach toward providing much expanded legal services to the poor compared to what we have at the present time, which, as you point out, has been fraught with some of the improper practices that Senator Hatch's committee has brought out.

I feel that this is a major opportunity for the bar associations of the Nation, and I have talked with the current president of the American Bar Association who is very sympathetic to such a movement.

Senator **Denton**. Thank you, sir.

There have been many challenges in the courts to laws passed by the Congress or to regulations promulgated pursuant to law that seek to protect the legal right to treatment of infants born with physical and mental handicaps and of handicapped individuals of all ages.

I recognize the tremendous complexity of the issues involved. I do not take a simplistic attitude on it, but I would ask if you, as Attorney General, will be willing to put the full resources of the Department of Justice to work to defend those laws and regulations in the courts even when lower court decisions are adverse to the administration's case?

Mr. MEESE. Senator, that is the responsibility of the Department of Justice, to defend the statutes and regulations that have been promulgated, and it would be my purpose, if confirmed as Attorney General, to see that that responsibility was carefully carried out.

Senator DENTON. Thank you very much, Mr. Meese.

I hope my colleagues choose to favorably move your nomination to the floor and vote for a speedy confirmation.

Thank you, Mr. Chairman, for permitting me the time to ask questions.

The CHAIRMAN. Thank you, Senator.

The distinguished Senator from Kansas, Mr. Dole.

Senator DOLE. Mr. Chairman, first let me apologize to Mr. Meese for my absence. We have been in a markup all day in the Senate Finance Committee on another matter, and I am sorry I missed some of the earlier discussions, but I am very hopeful that the nomination will be confirmed.

I would just say without reading that statement it has been my view that the President is entitled to his choice on selection of members of his Cabinet, especially when it comes to the Department of Transportation. [Laughter.]

However, I understand that the nomination that we are reviewing now is certainly not without controversy, but I think that the responses of Mr. Meese will evidence and demonstrate to nearly everyone on the committee that there is sensitivity, and compassion, and certainly competence and ability in the President's nominee for this office.

I just have a few questions, just general questions that I have a particular interest in having been active in enactment of the last Voting Rights Act, I just want to find out generally, Mr. Meese, what your views are on that legislation and where will it be on your list of enforcement priorities?

Mr. MEESE. Senator, the enforcement of the Voting Rights Act would have a very high priority as far as the Department of Justice is concerned, if I am confirmed to lead it. As a matter of fact, as I stated earlier this morning, the number of voting rights cases pursued by that Department over the past 3 years has expanded considerably over a similar 3-year period in the previous administration, and I would very definitely assign this a high priority.

Senator DOLE. I assume you are familiar with the case just handed down by the Supreme Court, *Conrail* v. *LaStrange,* which indicated that section 504—which prohibits handicapped discrimination in programs receiving Federal funds encompasses employment discrimination.

Will the Department of Justice vigorously pursue cases involving employment discrimination against the handicapped under section

504, particularly now that we have a definitive ruling by the Supreme Court?

Mr. **Meese**. Yes, Senator; again, if confirmed, I would certainly see to it that the Department would. I think it should be pointed out that that decision was made possible largely because of the effective advocacy of the Department of Justice in urging the result that the court ultimately reached extending to employment the provisions of section 504 of the Rehabilitation Act.

Senator **Dole**. I am aware of that, and I commend the Department of Justice for that.

Do you have an opinion on the legislation currently pending in the House and the Senate which would require that polling places in Federal elections be made accessible to the handicapped, but would give States and localities maximum discretion with regard to the means of compliance?

Mr. **Meese**. I am familiar with the legislation and certainly approve of it, particularly the latter portion that you mentioned, which gives a certain amount of discretion so that reasonable rules can be promulgated to carry it out.

Senator **Dole**. And I guess more generally do you agree that the Federal Government has a responsibility to insure that our disabled and elderly citizens have equal access to the political process, particularly as it pertains to Federal elections?

Mr. **Meese**. Yes, sir, Senator; I do.

Senator **Dole**. One of the provisions of the recently passed Senate crime package establishes a new program for Federal financial and technical assistance to States to relieve prison overcrowding.

I know that this is an area that you have been interested in for several years, as I have. The Senate provision had my strong support; in fact, I was the original sponsor of that measure. What are your views on the need for prison reform and overcrowding, and would you support budget requests, at least some budget requests to implement this legislation should it become law?

Mr. **Meese**. Senator, as you point out, I am very much concerned about prison overcrowding and am very much in favor of prison reform both at the Federal level and at the State level.

As far as a budget appropriation to carry it out, I would hope that we could find alternative means to Federal funding of prison construction in the States. As you know, the Federal Government has budgeted this year an unprecedented amount of money for improving our Federal prison system.

We also find that States are now living up to their responsibility to a much greater extent than ever before, some of our larger States having recently passed bond issues to rebuild or build new prisons in their jurisdictions.

I would hope that we could cooperate through the use of available Federal land wherever possible, available Federal buildings that are unused and unneeded, military facilities and the like, rather than getting involved in budget appropriations for purely State and local purposes.

It is an area, though, that I am very willing to work on with this committee and an area that would also receive high priority as far as I am concerned.

Senator **Dole**. I think almost on a daily basis or a nightly basis, we see some television reports on network news, or in this area, on local news channels, of rather severe overcrowding conditions, and even though new prisons are being built—and I think you have indicated the administration has made an effort to make Federal buildings available—it is still going to be a very serious problem for years to come. I understand the need for budget restraint, but I do believe that—although there is no constituency there—but it is a human concern that I think we must address, and I know of your past interest and your continuing interest.

But let me move on to another area with reference to courts, because I happen to be the Courts Subcommittee chairman.

The Attorney General has a vital role, of course, in the selection and nomination of Federal judges, and this administration sent to the Senate the names of persons who, with few exceptions, have received high marks in the ABA and others. Do you contemplate any change in the procedure?

Mr. **Meese**. No, Senator; at the present time, I know of no reason to change. I have participated, as has been pointed out earlier today, as a part of the judicial selection process from the White House standpoint. I think Attorney General Smith has set up a very effective process, and so at this point I see no particular reason for any change.

Senator **Dole**. What about the ABA advisory role to the Department? They now serve in that capacity.

Mr. **Meese**. I think seeking the advice of the American Bar Association on proposed judicial candidates has been beneficial in view of the evaluative role that they perform. Having that information available to the Justice Department, to the President when he makes his selection, and to this committee when they review the candidates or the nominees, I think is a very valuable asset.

Senator **Dole**. Last summer, the Senate passed legislation on the status of bankruptcy courts, and I try to monitor that—I hope I am not asking you to repeat yourself, because I know you have been here a long time, and I have asked my staff to be here, and they say you have not responded to these questions—but anyway, we did pass some legislation on the status of the bankruptcy courts, and unfortunately, the House has yet to work its will on this matter. We are fast approaching a deadline of April 1, by which some action must be taken.

I am not sure you have had an opportunity to review the different proposals. There is a Senate view on article I status for the judges, and the Rodino, or the House approach, which would make them article III judges.

Do you have any comment or opinion on which route to take, or would you rather wait and see what we work out?

Mr. **Meese**. Senator, I would suggest that the main issue is getting something worked out, as you suggest, by the 1st of April, because I do not think this is a deadline that is likely to be extended by the courts, in view of their understanding and willingness to allow the legislative process to work in the past.

I would hope that an accommodation between the two views could be worked out. I have talked with members of the Judiciary Committee in the House about the urgent need for them to move forward with the bill so it can get into conference to be worked out and perhaps reconciled.

Senator DOLE. Mr. Chairman, I have no further questions at this time.

Thank you very much.

The CHAIRMAN. Thank you very much, Senator.

Now, that completes round 1. I believe every Senator has had an opportunity to question Mr. Meese. So now, we will begin round 2, and we will have 15 minutes to each Senator, and when the green light goes off and the red light comes on, your time is up.

We will start with the distinguished Senator from Delaware and the ranking Member, Senator Biden.

Senator METZENBAUM. Would the Chair be good enough to advise us how late he expects to go?

The CHAIRMAN. Well, I would say, if it suits you, not later than 6 o'clock.

Senator METZENBAUM. Whatever the Chair says. I try to cooperate.

The CHAIRMAN. Does that suit you?

Senator METZENBAUM. Absolutely.

The CHAIRMAN. I think that will suit the rest of us, too.

Senator METZENBAUM. All right.

Senator BIDEN. Now, Mr. Meese, you know why things run so well on this committee—we have such an accommodating chairman—as a matter of fact, he is pretty accommodating.

I would like to go back a little bit to some clarification and a little bit of expansion on the first round, when I asked about past and future political role and activities.

In 1976 and again in 1977, the U.S. Senate passed what we are referring to today as the Bentsen amendment. That amendment would have prohibited the President from appointing an individual as Attorney General who played "a leading partisan role," and that question of "leading partisan role" is one that I am sure lends itself to different interpretation. And, as Senator Bentsen explained—and I quote—"It is time to assure the American people that law enforcement decisions will not be determined by partisan politics. And my distinguished colleague, Senator Dole, who was just here, in 1977, when he opposed the nomination of Griffin Bell, was in part due to Bell's "close political association with the President." Senator Dole wisely counseled us then that if we learned anything from the Watergate scandal, it is, "that the Department of Justice should be totally nonpolitical," "Judge Bell is by no means nonpolitical."

And Senator Dole continued, noting that Bell did not control the campaign, but did engage in "rather active participation."

Now, Mr. Meese, it has been reported that you were engaged in some of the following activities. One is that—I am sure you will vividly recall—immediately after President Reagan's victory in the New Hampshire primary, the President replaced a number of his top political advisors, putting Mr. Casey in charge of running the campaign and appointing you chief of staff for the campaign.

Then, in an article in the Los Angeles Times in 1980, they expressed the opinion that "The California mafia," referring to a group of Californians involved in the campaign, and headed by you, "assumed unchallenged control of the Reagan campaign."

And there are a whole series of instances where there is discussion about your detailed involvement and significant role in the campaign.

But what I would like you to do for us, Mr. Meese, is summarize for us your relationship with any fundraising that you have done for the President prior to or during the 1980 campaign, and after you do that, I would like you, if you would, to please tell us, in light of all the evidence to the contrary—well, that is being a bit pejorative; there may not be evidence to the contrary—it seems as though it is to the contrary—I have a pejorative staff—would you tell us whether you consider yourself to have only had a policy role, because I understand one of the comments made in the past was that you have indicated basically, yours is a policy role, and it seems as though to me, it is a lot more than policy.

So maybe you could start off by telling us about what role, if any, you have played in fundraising for the President. And by the way, there is nothing wrong with that. I want to make it clear I do not mean to imply there is anything wrong with raising money for the President. I just want to get a sense of what the detail of your role was.

Mr. **Meese**. Yes, Senator. My role was not in the fundraising area. That was not any part of my responsibility, to raise the funds. As a matter of fact, the finance apparatus of the campaign was generally separate from the other campaign operations.

Now, I may have on occasion participated in a fund-raising reception, but as far as having the detailed responsibility for any part of the fundraising effort, I did not.

Senator **Biden**. How about spending the money?

Mr. **Meese**. Spending the money as far as budgeting the money?

Senator **Biden**. Yes, or actually deciding where it would be spent. For example, on March 9, the Los Angeles Times article quotes you as saying in response to a question about the campaign financial problems, you said, "Now it will be a much better campaign. The money will be used much more sparingly and wisely. I think it will get us through the convention all right."

That kind of sounds to me like a quy who is telling us he has a significant role in the financial side of the campaign, too.

Mr. **Meese**. Actually, in terms of budgeting the financial side and how the money was to be spent, that was handled primarily by Mr. Casey. I did not have much of a role in that, other than participating with the other seven deputy campaign directors in general discussions of the budget. But the actual formulation of the budget was done primarily by Mr. Casey, by our Director of Finance and Administration and by the treasurer of the campaign.

Senator **Biden**. Again, during the campaign and just after, in an article on November 7 in the Times, it says that although you publicly deferred to Casey, you "had more power than the counsel to the campaign and Mr. Casey."

I guess you did not—Mr. Casey did?

Mr. **Meese**. I suspect that Mr Casey would dispute that statement, and I know that in my mind there was no doubt that Mr. Casey was in charge of the campaign. I also suspect there was no doubt in the minds of the others who were in the campaign management.

Senator **Biden**. Let me go back to another thing, then.

On the 17th of this year, again in a New York Times article, regarding Citizens for the Republic, a Political Action Committee formed by the President alone with others, including you, I am told, in 1977, you were reported to have had a central role in the political committee's failure in 1980 to respond to a subpoena for records pertinent to the Federal Election Commission's investigation—and I am, quite frankly, not interested in the failure to respond to the subpoena, but I am interested in the fact that an attorney for the committee explained the failure to respond, saying that you were "too busy handling the Reagan campaign." And the Times article also tells us that the Citizens for the Republic PAC sent a telegram to the Federal Elections Commission, requesting a delay in responding to the subpoena and asking that all questions be directed to you. And, as I understand it, you officially left the Political Action Committee in the spring of 1979, but continued to serve as a consultant. And, in fact, the Times says that your financial disclosure records from the year preceding the 1980 election showed that a significant portion of the income was legal fees from the Political Action Committee and fees from Mr. Reagan's campaign.

Is that correct, essentially?

Mr. **Meese**. Yes, Senator; in answer to your second question about income, it is not a significant portion. We are talking about 1979 now, I assume?

Senator **Biden**. Yes; 1979.

Mr. **Meese**. A portion of my income was derived from legal fees. I was an attorney representing as a lawyer Citizens for the Republic. I did represent them from about 1977 through 1979.

Senator **Biden**. Again, I want to make it clear for those who may be listening that I am not suggesting in any way that there was anything wrong with that. I am just trying to establish how, if you had that kind of relationship, you were collecting fees from, as the lawyer for; it was suggested by others who were subpoenaed that the guy to talk to about this PAC was you. The implication is that you had some political and financial control of or involvement with, in a more than passing way.

Mr. **Meese**. No, Senator; I had no political or fundraising role in Citizens for the Republic. My role with them was as their attorney. I was an attorney in private practice at that time. They were one of my clients. And that was my only financial relationship or management relationship. I was also a member of Citizens for the Republic. I was a member of the steering committee which was, I believe, dismantled at the start of the Reagan campaign, sometime during 1979. But——

Senator **Biden**. So that—for example, I had—I am about to lose him, because he is moving from Delaware—I had a guy who was an accountant with the DuPont Co., who has handled the records of our campaign since 1972, and he would not know a fundraiser from a disbursement for balloons. But he is an incredibly well-qualified accountant. He kept all the books, and he kept it straight. And he had no political involvement. Is that the kind of relationship you had?

Mr. MEESE. I did not even have that close a relationship. I was not the one who kept the books. I strictly did the legal work. And, in the instance you mentioned from the quote in the New York Times, at that time I was acting as a volunteer attorney for service of process, because the organization was between attorneys since most of us who had been involved with the organization were withdrawing because of the campaign that year.

Senator BIDEN. Well, I want to tell you, this town has a way of giving people reputations and credit. I apologize if I am destroying your image as a significant political factor in the President's election. I kind of thought you were a heck of a lot more powerful than you are. I did not realize this.

The CHAIRMAN. Maybe in the White House, but not in fundraising.

Senator BIDEN. That is right.

And in terms of the second part of that, which is the White House, the impression that I have—and at least, most of us Democrats have, because we do not really know—is that you are up to now, and even now, at least one of the "big three." You are one of the real powers.

In the one meeting that I attended with the President, and the only one I was, I must tell you, to be up-front with you, I walked out of that meeting, and I thought you ran the whole show. And I do not mean that in a disparaging way. I figured if I had to get anything, if there was ever any way to get the drug czar, for example, or anything else, it was not the President I had to talk to, but it was you. And I do not mean that to be disparaging to the President. I mean, how can the President know everything about every one of these issues?

So the impression that a lot of us Democrats have, at least, is that you are a real heavy hitter. I mean, you are the main man the President has in terms of political decisions, in addition to policy decisions.

Now, I know you cannot characterize yourself as the main man, but in terms of influence with the President of the United States, can you name me, other than Nancy Reagan, three or four people who you believe have more influence than you?

Mr. MEESE. Senator, I am not in a position to evaluate in a quantitative way who has influence with the President. I know there are members of the Senate who have considerable influence with him——

Senator METZENBAUM. How is Paul Laxalt's standing?

Senator BIDEN. You are good. You really are good, I tell you. [Laughter.]

Mr. MEESE [continuing]. And I know there are others in the White House. But I would say that my role with the President in the White House is primarily on the policy and governmental side, rather than the political side.

Senator BIDEN. Why, then, are all these center right people so worried about you leaving? I guess they have overestimated you, too. I mean, they really think you are—I mean, you are the guy. You are—everything I see, everything I read, everything I hear—

you are the guy. They are not worried about those other "pinkos" down there. You are the guy. Now, I am being a little facetious, but seriously, why am I reading all this? Are they wrong?

What I am trying to establish is obvious. I mean, aren't you a major political adviser to the President of the United States of America?

Mr. **MEESE**. Senator, I would say I am a major policy adviser to the President, if you can distinguish that from being a political adviser.

Senator **BIDEN**. Let me put it this way: Joe Biden just got back from Moscow, talking about arms control with a Republican Senator. Joe Biden wanted to see the President of the United States of America to tell him about what happened in Moscow and make some unsolicited suggestions as to what might help get the process moving.

If it was anything like the Carter administration, there would be several people who would say to the President, "Now, you have got to be careful, Mr. President. The last thing we want is Biden walking out of this White House after talking to you. First of all, you are going to upgrade him an election year by talking to him.

"Second, when he walks out of here, you have got to be worried that he may just lambast you on not having accomplished anything thus far." That discussion, I know, went on in the Carter administration, those kinds of discussions. And I hope they go on—they would have to go on in the Reagan administration. They went on in the Ford administration.

Would you not be one of the guys the President would be sitting down and talking about whether or not you really do see Biden or Schmedlap, or anybody? I do not really care who it is.

Mr. **MEESE**. Senator, it is possible that I might be in such a meeting, but that advice as to that aspect on legislative matters and political matters would really come from others in the White House.

On the other hand, on the subject matter of arms control, in addition to the national security assistant, I would probably be involved in that aspect of it.

Senator **BIDEN**. Well, that is interesting. I would like to find out who the guy I have to talk to then is, but I guess I know him. I always refer to him as President Laxalt. But my time is up. I will be back; I want to ask you some civil liberties stuff and follow up more on this, but thank you very much.

The **CHAIRMAN**. All right. The distinguished Senator from Maryland, Mr. Mathias.

NATIONAL SECURITY DECISION DIRECTIVE 84

Senator **MATHIAS**. Thank you, Mr. Chairman.

Mr. Meese, when you and I met some days ago we discussed National Security Decision Directive 84. Since the time of our discussion, the administration has announced that it is suspending this prepublication censorship program.

For the benefit of those members of the committee who have not followed this as closely as you and I have, I might just recall that the administration had announced in March of 1983 that it planned to require all Federal employees with high-level security clearances to submit for censorship, the rest of their lives, their writings on a number of subjects.

A number of people throughout the country, including a number of Members of Congress, believed that this was an enormous and burdensome kind of censorship system. We felt that it could only be justified, if at all, as a last resort, and that really no case had been made of need for this kind of a program.

And as a result of these considerations, the Congress voted last fall to postpone the program until at least April of this year. So we are coming close to the moment in which we have to reconsider the problem, and it will fall in your lap to be the legal adviser to the administration on what should be done.

So I am wondering if you can tell us at this time, if you know, when the administration will issue some statement of intention with regard to this censorship issue.

Mr. MEESE. Senator, on that particular aspect of National Security Decision Directive 84, which has been suspended, I believe there has been a public statement made, but the position of the administration is to continue suspension of that provision of NSDD-84 until such time as an accommodation can be worked out with the Members of Congress, which reflects the mutual concerns of the administration for the preservation of national security information on the one hand and the desire on the part of Members of Congress to protect the individual's right to privacy and freedom of expression on the other.

Senator MATHIAS. Well, those negotiations are continuing. Senator Goldwater held a hearing in the Intelligence Committee yesterday on this very subject. But what you are telling us is that there will be no summary or arbitrary action on the part of the administration until there is a full involvement of the Congress in the decision?

Mr. MEESE. Yes, sir; that is the intent of the administration.

Senator MATHIAS. It is a very troublesome subject. There is no question that there are serious leaks. The problem is to design the remedy that is appropriate to the problem. Bill Safire and Jack Kilpatrick, for example, have felt that there probably is no way to fashion any kind of a censorship program which will be effective.

As a matter of fact, Jack Kilpatrick said, "Let us drop Directive 84 down George Orwell's memory hole," which I thought was a pretty good prescription.

But the question is whether revoking rather than merely suspending the plan would not be better in the long run.

Mr. MEESE. I think that is one of the things, Senator, that will be subject to discussion with the Members of the Congress as these discussions proceed.

Senator MATHIAS. I am sure you have been involved in some of these conversations in the White House and I am wondering if you have developed any suggestions of your own for protecting secrets. Are there methods which would not violate the first amendment and which would not create enormous, burdensome problems like this prepublication censorship plan? That would have involved legal contracts on more than 100,000 officials.

Mr. MEESE. Senator, I have not developed, of my own knowledge, suggestions on this. I am sure that, if confirmed by the Senate, I will be very much involved with this process, including the discussions that are being held with Members of Congress.

I believe there are ways in which the mutual concerns can be accommodated and in which classified information can be protected, particularly this very sensitive, compartmented information, without unduly infringing upon individual rights.

Senator MATHIAS. Of course, one of the problems we have with leaks is that many of them begin high in the Government itself. Historically this has been the case. You can go through administration after administration, Republican and Democratic.

Some of the most startling disclosures of highly classified information have been by Presidents or Cabinet officers or other senior officials. What do you do about that?

I assume the President of the United States has the authority to declassify anything for any reason, but that is where a lot of the problem originates.

Mr. MEESE. Well, Senator, you have asked what may be a rhetorical question because I do not know that anyone has come up with a satisfactory solution, because it does involve a balancing of competing objectives, as we have just indicated in this discussion.

Senator MATHIAS. Two years ago, someone quoted you—you can defend yourself if it is not a correct statement—that one of the important ways of protecting our Nation's secrets was by attacking the problem of overclassification.

I assume, if that is an accurate statement of your position, that you were reflecting what Potter Stewart once said that when everything is classified, nothing is classified. Do you have any thoughts or ideas as to some revision in the classification system so that what really is sensitive is protected, but the things that are marginal and not critical do not get the same kind of elaborate, expensive, burdensome protection which makes the whole system hard to work?

Mr. MEESE. Yes, Senator; I do have some ideas on that, and the quote that you gave is an accurate one. Most of the effort I have put into this whole subject has been to stress the need for avoiding overclassification of documents. I think there is far too much classification of documents in the Federal Government, and I agree with what you have said and what Justice Stewart had earlier said that when everything is classified, it is impossible then to protect what is really important.

I think one of the things that the President has been stressing indeed, he stated this in the preamble to NSDD-84, is that only that information whose disclosure would harm the national security interests of the United States may be classified.

I think it is not so much a redefinition of what should be classified, but a more careful monitoring and a more careful enforcement process to see that only that which, if disclosed, would be harmful to our national interests is given that classification stamp.

Senator MATHIAS. Of course, one of the problems with NSDD-84 was the enormous number of people that would have been swept within that net, which was in my judgment kind of overclassification in itself. I suspect that maybe one of the motives for that was to make a system so burdensome, so full of redtape, so full of bureaucratic problems, that fewer people would apply for the security clearances that would bring them within that purview.

Now, would it not be simpler just to restrict the number of security clearances headon rather than to go an indirect route of that sort?

Mr. **Meese**. Senator, that certainly would be one approach, and I think it is one approach that ought to be explored. On the other hand, it is my understanding that most of those people that would have been brought under the requirements of the sensitive, cumpartmented information were primarily in the Department of Defense—generals, admirals, and others who have access to this information, who are users of the information and rather than those who are collectors of the information and who are already subject to those requirements.

Senator **Mathias**. Well, I think that, of course, is true, but we are talking about over 100,000 people in the Department of Defense alone, plus however many there might have been at the Department of State.

Mr. **Meese**. Yes, sir; I believe there were something like 10,000 beyond the 102,000 in the Department of Defense.

Senator **Mathias**. Well, I think the important thing is that you will be frontally involved in this problem. There are a lot of Americans who are deeply concerned about it. Can we be assured by you that the Congress will be consulted before there is any attempt to impose a new system?

Mr. **Meese**. Yes, Senator; I have an equal concern to the one you expressed, and I can assure you that the President has already directed that the Congress will be consulted before any further action is taken.

Senator **Mathias**. And I want to repeat Jack Kilpatrick's advice to drop it down George Orwell's 84 memory hole, and let us start fresh.

ENFORCEMENT OF ANTITRUST LAWS

Another subject of concern to a lot of Americans and to consumers all over the country is the question of the administration of the antitrust laws, which will be one of your major responsibilities as Attorney General.

There has been, without any question, a major shift in emphasis in the administration of the antitrust laws. Now, when you mention the antitrust laws, people yawn; they get up and walk around. But it is not really an esoteric subject.

We are talking about the marketplace; we are talking about the mom and pop grocery store. We are talking about the supermarket chain. We are talking about a lot of real-life transactions in which citizens are involved every day.

It also involves, of course, some very big business. We have had oil companies experiencing a kind of epidemic of mergers. City Service merged with Occidental; Texaco has moved to take over Getty; Atlantic Richfield is said to be casting a covetous eye on Gulf.

Texaco and Getty, big as they are, as big as a merged company would be, may be swallowed by an even bigger fish somewhere along the line. So there is a lot happening in the corporate structure of America. Inevitably, that is going to affect the marketplace, and inevitably, if there is some change in the marketplace, the consumer is going to be affected, maybe beneficially, maybe adversely.

But it is the business of those who enforce the antitrust laws to anticipate the consequences and, to the extent that is humanly possible, to influence the course of events. Being big is not necessarily bad.

Under our system the decision of whether a particular merger is permissible has to be left to the executive branch. That is your job; that is what you will be paid for as Attorney General.

But the number of mergers raises some question whether we are moving too fast toward a concentration in already concentrated industries. Could you tell us what your philosophy is about keeping the marketplaces open? What sort of philosophy will you apply in the antitrust field to insure that we maintain competitive oil and other industries?

Mr. **Meese**. Senator, the philosophy that I would apply, if confirmed, would do just that; it would address the impact on competitiveness and competition that a proposed merger would create.

The Department has merger guidelines to provide some basis for evaluating this. These merger guidelines, which I think were promulgated in 1982, have been a big step forward, and they focus on this matter of whether a particular action would promote monopoly or tend to restrain competition. That is the basis for the guidelines.

I think you have to look first at each industry; you have to look at whether you are evaluating a market area that is national in scope or statewide in scope or, on the other hand, that may be global in scope. One part of the merger guidelines does just that.

In addition to making sure that proposed mergers and other combinations do not reduce competition or do not create a monopoly situation, I think vigorous antitrust enforcement activity against cartel-type actions—bid rigging, price fixing, market allocation, output reduction, that sort of thing—is also a responsibility of the Department of Justice and should be vigorously pursued.

Senator **Mathias**. Of course, one of the difficulties you will have is that this is a dual problem. You have to maintain a competitive marketplace, but you also have to look at questions of productivity.

The United States will probably suffer a $100 billion trade deficit this year. I have seen projections as high as $120 billion for next year. I hope they are wrong, but that puts a premium on this country's ability to produce effectively and efficiently and economically so we can compete in the world.

Now, what about restraints that affect productivity? Is it not time that we had a searching look at the impact of antitrust laws, particularly on the international operations of American business?

Mr. **Meese**. Yes, Senator, I think it is time to have such a look. In fact, that has been done by this administration in regard to research and development and the particular impact of antitrust laws on that, which directly affects productivity.

This is what I referred to when I mentioned earlier that it is important to determine, in analyzing a particular action by companies that may be involved in a merger or some other combination, whether the focus should be on strictly the national situation or whether you have to take into account the global market conditions, which may be a very big factor in determining whether such a merger, considering the productivity factor, is the proper thing to do as far as balancing.

And this is often a sensitive balance between competing objectives, between productivity on the one hand and the possibility of monopoly on the other.

Senator MATHIAS. My time is up. I would like to come back to this subject before the hearing is over, and perhaps your staff could pull out some of the pending R&D antitrust bills that we can discuss in some detail.

The CHAIRMAN. The distinguished Senator from Arizona, Mr. DeConcini.

Senator DECONCINI. Mr. Chairman, thank you.

I know the Senator from Montana has been sitting here a long time and I just came in.

The CHAIRMAN. You can take your choice. You can toss a coin.

Senator BAUCUS. I will yield to Senator DeConcini.

Senator DECONCINI. I thank the Senator.

Thank you, Mr. Chairman.

Mr. Meese, I know it has been a long day. I think you have conducted yourself very well from the little bit I have been here and from what I have heard from others who have been here, and I thank you for the candidness and the straightforwardness with which you have addressed some of the problems presented.

As you know, you and I have discussed on a number of occasions, and have worked with the Vice President's Office on the subject of a drug czar or a national coordinator. I wonder if you can first lay out for the record why there has been this opposition to a national drug coordinator and what you have attempted to put into place to offset that. I am also going to ask you how effective this substitute measure has been. Finally, I will have a question as to the law enforcement coordinating committees

Can you give us a little background on why you have opposed the coordinator and what you have been doing to provide temporary national coordination of drug enforcement.

Mr. MEESE. Yes, Senator; the so-called drug czar bill actually had been considered, I understand, before, but during this administration was enacted after we had already set up a coordinating mechanism in the drug law enforcement field.

Our feeling was that this was not necessary, that it would create yet another office to be involved in the drug enforcement picture, that it would possibly, at least the original legislation, put in a relatively lower level staff person to supersede the responsibilities and authority of department directors who have the ongoing day-to-day operational responsibility for drug enforcement.

I would like to point out, though, that I believe an accommodation is now being worked out between the Justice Department and yourself, and particularly Senator Biden, to see if we cannot resolve this in a way that addresses the feelings of the Congress as well as what we perceive to be the needs of the executive branch.

But if I may turn, then, to what we are doing at the present time. Approximately 2 years ago, at my suggestion and with the concurrence of the Vice President, we initiated the first coordinated effort to bring together the various resources of the Federal Government for the interdiction of narcotics into this country, and that was the south Florida task force experience.

There was a particularly acute situation involving not only narcotics trafficking through the borders down there by boat, by individuals, and by plane, with an impact on the drug situation, but it also was having a major impact on crime in that area.

Homicides had increased vastly because of the trafficking with people trying to rob each other's supply of narcotics, the large sums of money involved, and so on. There were a large number of machinegun killings taking place that could be traced to the narcotics traffic.

Innocent citizens and bystanders were being endangered along with those people engaged in the narcotics traffic. It was on this basis that, under the direction of the Vice President, we set up a coordinated effort bringing together all of the agencies that were involved in drug enforcement.

We also added some new agencies to that. Through your cooperation, as well as other members of this committee and of the Congress, we were able to amend the Posse Comitatus Act, which enabled us to use resources of the military departments for the first time in recent history.

As a result of this, an effective combined effort was made in the south Florida area in which agents of the Drug Enforcement Administration, the Coast Guard, the Customs—primarily augmented by the Army in terms of providing helicopters, the Air Force, in terms of providing radar and surveillance and overhead photography, and the Navy, in terms of providing their radar planes as well as ships at sea and some aircraft support—all of these were brought together, and for the first time the Federal Bureau of Investigation was also brought into the drug enforcement field.

This was extremely successful in south Florida. Not only did the drug trafficking suffer a real blockage of drug importation into this country, but in addition the number of homicides decreased by something like 20 percent from 1982 to 1983, an indication that criminal activity generally was being affected by this approach.

One of the most beneficial aspects of this effort was that, because of the Federal involvement and the Federal determination to participate, the State and local governments were willing to increase their efforts so that it was not only a joint effort as far as the Federal Government was concerned, but it was also a multilevel governmental effort in terms of what was being done to interdict and to investigate narcotic crimes within the State of Florida.

Because of the success of this effort, two things have followed. First of all, the border interdiction system has now spread nationwide. We have four to six regions from which the resources of the Coast Guard, Customs, DEA, and the military departments are deployed to interdict the flow of narcotics into this country.

In addition, the Attorney General has established 13 Organized Crime and Drug Enforcement Task Forces—made up primarily of FBI agents with support from the U.S. attorneys, other attorneys within the Department of Justice and the Drug Enforcement Administration—throughout the country to combat the drug trafficking problem.

This has worked out very well. Most of them have just gotten started, but we feel that this effort, if it follows the experience in Florida will be very effective.

What we have done basically in terms of your original question on coordination, is that we have provided the coordination and team work necessary between the departments but, utilizing existing resources without the addition of another layer of supervision and administration.

Senator DECONCINI. When did the task forces for these regions, become established?

Mr. MEESE. The task forces started at the beginning of 1983, and I think they were fully operational by about September of that year.

Senator DECONCINI. Are you familiar with the Law Enforcement Coordinating Committees which are part of the President's overall plan to fight drug trafficking and organized crime?

Mr. MEESE. Yes, Senator, I am familiar with them. Actually, those Law Enforcement Coordinating Committees were not exclusively for the organized crime and drug trafficking. It was to provide a means of getting cooperation at the local level on all types of crimes in which the Federal, State, and local governments share a concern.

Senator DECONCINI. Do you know how these committees are performing Mr. Meese?

Mr. MEESE. I do not have detailed knowledge of how they are working but I understand the organization and the setup. Though I do not have detailed knowledge of how they are working, my general understanding is they are working fairly well. Some are working better than others and of course one ingredient is the degree of cooperation that can be obtained from the State and local officials involved.

But it certainly is a major thrust of the Department of Justice, and I understand that there has been steady, consistent improvement and approval of their efforts at the local level consistently since they were established during 1982.

Senator DECONCINI. For a historical perspective, the formation of these committees was announced by Attorney General Smith on June 27, 1981, and became recommendation No. 6 in the final report of the Attorney General's Task Force on Violent Crime.

As you know, Senator Biden and I, along with others, have been greatly disturbed by the lack of coordination in our effort to established a national coordinator. We have felt it is very important, that there should be intelligence and resource sharing among the State and Federal law enforcment agencies.

We were pleased to hear the President say, in October of 1981 the following:

> "Together the Federal and State officials will develop detailed plans on how to bring their joint resources to bear against the worse crime problem in the particular district. This will mean that priorities will be proper and realistic, set in city, county, State rather than just in Washington, DC.

I certainly subscribe and endorse the President's statement. Attorney General Smith described the program as follows:

> Our U.S. attorney's Offices work very hard just like their non-Federal counterparts, but better coordination with State and local efforts could make their own efforts more effective. Therefore, I am instituting a program that will require all U.S. attorneys and other Federal law enforcement agencies to emphasize the importance of close coordination with State and local law enforcement agencies.

The Attorney General goes on:

> In each district, the U.S. Attorney and other Federal law enforcement officials should meet with the appropriate State and local law enforcement officials to identify together the community's most important crime problems upon which the Federal resources can have an impact. Then the U.S. attorney should coordinate with Federal, State, and local law enforcement officials to develop a plan for using Federal resources and jurisdictions to achieve the maximum impact on the most serious crime problems facing that community.

Finally, Associate Attorney General Lowell Jensen testified before the House Subcommittee on Crime in August of 1983, and said:

> Of course, the greatest need for coordination is in the area which Federal legislation cannot directly reach, cooperation among State and local enforcement agencies and their Federal counterparts. No Federal drug czar can direct the policies and practice of the State and local agencies which comprise more than 90 percent of the total national law enforcement resources. We are, however, attempting to enhance coordination and cooperation with State and local law enforcement through the Law Enforcement Coordinating Committees, LECC's, which the Attorney General has directed be established in every Federal judicial district and through the executive working group whose membership is composed of representatives of the National Association of Attorney Generals, the National District Attorney's Association, and the Department of Justice.

Now, what is your involvement in these coordinating committees, Mr. Meese? Can you give us some idea what you plan to do to enhance these efforts? I know that these coordinating committees have not been meeting regularly, and at least in Arizona, there have been all of 8 minutes worth of meetings last year. This meeting was arranged under the guise that the Attorney General was in town and had to have a forum at which to speak.

What comment do you have about these meetings, particularly those of the type I have just described.

Mr. **Meese**. Well, Senator, I have not had any involvement directly in these Law Enforcement Coordinating Councils in the past because they are wholly within the province of the Department of Justice.

If confirmed by the Senate, I intend to have a major role as far as pushing these in the future. I agree with you that they are an excellent resource. They are an excellent way of coordinating effort at all of the levels of Government.

As I said earlier, I think there are different levels of activity and different degrees of accomplishment as far these are concerned. I do know that the integrated plans that you talked about for local law enforcement for coordinating councils are now coming in, and I know that in various areas they are working very effectively.

Senator **DeConcini**. Excuse me. Mr. Meese, did you know that these committees were instructed to meet every 2 months?

Mr. **Meese**. It was my understanding that there was a regular, periodic timeframe from meetings. I think one of the things that has happened, and let me go back if I may, and just say that in those that have been successful, they have developed plans, they are working together, they are sharing resources, they have developed means of sharing intelligence, and they have been very effective.

As a matter of fact, there are several jurisdictions where we now have a cross-designation of assistant U.S. attorneys as deputy district attorneys and deputy district attorneys as assistant U.S. attorneys as a part of this plan, so that cases with both Federal and State ramifications can be prosecuted by the same official in both categories of courts.

These are the kinds of things that come out of this effort, but I think that there will be a material improvement now because one of the things that has been put into the budget this year for the first time is a coordinator in each of the 94 U.S. attorney's offices. Up until this time, it was an additional duty for someone in the office, and often additional duties do not get the attention that they deserve. It is my understanding the Department has included in the budget the position of coordinator; who will have the primary responsibility for making these programs operate under the direction of the local U.S. attorney.

Senator DECONCINI. For background, purposes I will reiterate that the committees are instructed to meet every 2 months. This schedule would have had them meeting approximately 12 times since December 1981. Of the 94 U.S. attorney districts, only three LECC's have met 12 times. Half have met 3 or fewer times and 16 have met only once. In Arizona the LECC met on December 8, 1981, and then again a month later on January 15, 1982, for approximately 8 minutes when the Attorney General was there. The third and last meeting of the Arizona LECC was May 12, 1982, nearly 2 years ago.

Now, I happen to know something about that one because I have some contacts with prosecutors and local law enforcement. They would love to meet with the Justice Department. I just hope because of the Department objection to a national druq coordinator you could develop an effective coordination through the LECC's. I hope that you can convince me that you plan to place the emphasis there.

Mr. MEESE. Yes, sir, I certainly do.

The CHAIRMAN. Your time has expired.

Senator DECONCINI. I just got started, Mr. Chairman.

Senator HATCH. I will defer to you.

Senator DECONCINI. I am going to go into another area of questioning.

Senator HATCH. That is fine.

The CHAIRMAN. The Senator from Utah.

Senator HATCH. I will be glad to defer to Senator DeConcini.

Senator DECONCINI. Let me go on to one other area, Mr. Meese, that is of concern to me, and I appreciate the Senator from Utah's indulgence.

The Hispanic community in the United States is extremely fearful about the attitude of the administration toward them. This feeling is caused by the administration's unsuccessful efforts regarding the Voting Rights Act and some other things we have been involved in. Some of these have been ironed out and some have not.

They view the immigration reform bill being supported by the Justice Department as discriminatory in both intent and effect.

They view the President's attempt to replace and subsequent firing of the only Hispanic on the Civil Rights Commission as a disregard for their rights.

The Hispanic community sees the President's attempt to weaken the Voting Rights Act as intended to weaken their growing political influence in both local, State, and Federal politics.

What can we expect from the Justice Department, Mr. Meese, under your direction in the area of civil rights protections for Hispanics?

Mr. **MEESE**. Senator, if I am confirmed, you can expect a vigorous effort not only to protect the rights of the Hispanic community citizens in all aspects, particularly in the voting rights area, but also to have a real effort at communication with these groups so that whatever perceptions or misperceptions they may have at the present time are changed into a realization that this administration, and particularly the Department of Justice, is very much interested in nct only having their views but serving their interests.

I might say that in the course of the last week or 2 weeks now I have had occasion to meet with representatives of LARAZA, the Mexican American Legal Defense and Education Fund, and the League of Latin American Citizens.

In each case, I have mentioned to them my desire for that kind of communication and my understanding that we will not always agree on every issue but at the same time my desire for their input into the policies and practices of the Justice Department, if I am confirmed by the Senate, and my desire to continue that communication on a permanent basis.

Senator **DECONCINI**. I am very glad to hear that, Mr. Meese. When Attorney General Civiletti was before this committee, the same question was asked by this Senator and Attorney General Civiletti responded as you did about those concerns. He went so far as to offer and agree to create a Hispanic advisory committee to the Attorney General.

Have you given any thought of taking similar steps and would you also consider taking the necessary steps to establish an advisory committee, you may not agree on every issue?

Mr. **MEESE**. I have not had an opportunity to give thought to that in the past, but I certainly would give thought to it. As I assured the citizens I met with the other day, if confirmed, I will make consideration of a possible advisory committee a major priority.

Senator **DECONCINI**. Would you give some thought to it overnight and maybe have a more definitive answer tomorrow?

Mr. **MEESE**. I think, Senator, it would be premature and perhaps presumptuous of me to make a decision that can only be made by the Attorney General until such time as I am confirmed. But I would assure you that if confirmed I would see this as one of the things that should be considered as a means of the communication that I discussed.

Senator **DECONCINI**. Just for the record, Mr. Civiletti went ahead and made that commitment and of course fulfilled it with an advisory committee.

Do you intend to actively pursue qualified Hispanics for employment in the Justice Department and, if so, how are you going to do it?

Mr. **Meese**. Senator, I certainly would pursue qualified Hispanics, if confirmed, particularly by, quite frankly, soliciting recommendations in those areas of the country where they are most available. I think one of the basic responsibilities and opportunities of anyone in the Federal Government is to extend the search into the communities and States where qualified lawyers of Hispanic background are located so that they can be attracted into the Federal Government and particularly into the Department of Justice.

Senator **DeConcini**. What about the Federal judiciary, Mr. Meese. Were you involved in the White House selection of appointment of Federal judges?

Mr. **Meese**. Yes, sir; I was involved in the judicial selection process there. Again, here I feel there is an equal need to search as much as possible and to work with the Members of the Senate from whom the recommendations come.

Senator **DeConcini**. Do you know how many Hispanic Federal judges have been appointed under the administration?

Mr. **Meese**. No, sir; I do not.

Senator **DeConcini**. I believe there is only one, but I wonder if you have any plans to take effective measures to involve the Hispanic community in seeking out more Hispanic Federal judges?

Mr. **Meese**. Sir, this is a little more difficult than the employment process because, as you know, the recommendations for judges generally come from Members of the Senate; but I would propose, if confirmed, to work with the Senate to try to have the Senators expand their own efforts through their selection committees, which now I think exist in most States, so that that would be one of the ways in which these candidates could be brought in.

I would also utilize the resources of the Justice Department to find qualified Hispanic attorneys and judges for elevation to the Federal Bench so that they, in turn, could be recommended to the Senators for their consideration.

Senator **DeConcini**. I take it that you would get actively involved in communicating with Senators when there is a vacancy within their State for the Federal judiciary and offer suggestions regarding the need to appoint qualified Hispanics.

Mr. **Meese**. Yes, sir; I would.

Senator **DeConcini**. I compliment you for that because I must say that that is exactly what Griffin Bell and Mr. Civiletti did, and I would hope that that would be the continued policy.

Mr. Meese, I have some other questions regarding the Department of Justice under your command that I will submit to you in writing unless tomorrow we are still having these hearings.

I want to thank the Senator from Utah for his courtesy.

Mr. Chairman, I will yield at this time. I would like to come back tomorrow and continue.

Thank you, Mr. Meese.

The **Chairman**. All right. The distinguished Senator from Utah.

Senator **Hatch**. Mr. Meese has been there since 2:30. This would be an appropriate place to stop, Mr. Chairman.

The **Chairman**. All right. I think we had a good hearing today, Mr. Meese. I want to congratulate you upon the manner in which you have handled yourself. You have proven to be very articulate, very informed, and very candid and frank, and the committee likes that.

We will now recess until 10 tomorrow.

[Whereupon, at 6:05 p.m., the committee recessed to reconvene at 10 a.m., March 2, 1984.]

NOMINATION OF EDWIN MEESE III

FRIDAY, MARCH 2, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Mathias, Laxalt, Hatch, Dole, Simpson, Grassley, Specter, Biden, Kennedy, Metzenbaum, DeConcini, Leahy, Baucus, and Heflin.

Staff present: Duke Short, chief investigator; Joseph Kopka and Allan J. Spence, investigators; and Ruth E. Lucas, investigative clerk.

The CHAIRMAN. The committee will come to order.

The distinguished Senator from Utah.

OPENING STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman.

I would simply like to open with an observation for the record. There is no need for Mr. Meese to comment about this if he chooses not to do so. But I have repeatedly heard the charge made, principally in the media, but also by members of this committee, that among the civil rights sins of the present administration has been their opposition to the extension of the Voting Rights Act.

I have no real interest in reopening this issue at this time, but I do object to this particular type of historical revisionism coming in particular so shortly after the described events.

For the record, let me state that at no time did the administration or William French Smith or Mr. Bradford Reynolds call upon Congress not to renew the Voting Rights Act. Rather, their precise position, at least over here in the Senate, was support for the longest extension in the history of the act.

What the administration opposed was the establishment of a radically different standard of identifying voting discrimination, the so-called results test, in place of the traditional intent test. Whatever anyone thinks about the merits of that particular issue, let us get the record straight. The administration and the Justice Department and Mr. Meese supported an unamended extension of the Voting Rights Act. And at no time did they oppose the extension of that act.

I do not know anybody who was not in favor of extending the Voting Rights Act. There were some legitimate policy and philosophical differences, and they still exist. That does not make them right or wrong. It just makes them differences that decent people can disagree about.

Mr. Meese, there is no question about your background in criminal law. It is impressive, I think, to everyone here. However, could you describe for this committee the nature of your experience in civil law either in the course of your public service or while you worked in the private sector.

TESTIMONY OF EDWIN MEESE III, OF CALIFORNIA, NOMINEE FOR THE OFFICE OF ATTORNEY GENERAL

Mr. MEESE. Senator, in the early part of my practice for the first 2 years of my professional experience under the rules that were then prevailing in county government, I was able to carry on a civil practice on a part-time basis while serving as the deputy district attorney. That was a common practice in those days, and indeed I engaged in virtually every area of civil law that is common to most general practices; that is, I practiced tort law to a certain extent, contract law, probate law, family relations law, and so on.

Later on, in the private practice of law during the period from 1977 until 1981, I did considerable work in corporate law, business law, and related matters. Also during the period that I served as vice president for administration of Rohr Industries in 1975 and 1976, I had the legal department of that corporation under my jurisdiction and supervision.

In addition to that, during the time I served in Sacramento for 8 years, particularly during the first 2 years as legal affairs secretary to the Governor of California and to a lesser but still significant extent during the years 1969 to 1974, I was involved in all aspects of governmental law.

The legal cases and the legal matters in the State of California are very similar, though on a much smaller scale, than those that are handled by the Department of Justice here, and during that period of time I worked closely with the Department of Justice in California, mostly on governmental law.

And likewise, during the past 3 years, I have had occasion from the policy standpoint to delve into most areas of governmental law.

Senator HATCH. Thank you. As you probably know, the Senate unanimously approved on Monday of this week a package of reforms—a bipartisan package of reforms—to the Freedom of Information Act. Undertaken over a long period of time—will your administration continue to support the efforts of the Congress and those by FBI Director Webster to effect reforms of the Freedom of Information Act, particularly in the area of informant activity?

Mr. MEESE. Yes, sir. That has been the thrust. I think the amendments that have been passed and the package of amendments that was provided by the administration was a very salutary updating of that act. We will be in support of it.

Senator HATCH. Well, thank you. Appointment of members of the new Bicentennial of the Constitution Commission has been delayed, as you know, for a considerable period of time pending the determination by the Justice Department of the propriety of Members of Congress serving on the commission. Do you have any knowledge as to the status of this study and will you see to it that it moves along expeditiously?

Mr. **Meese**. Senator, I do not know the status of that study at the present time. If confirmed by the Senate, I would want to be sure that the Department proceeds with its pending matters as expeditiously as possible in every case, including this one.

Senator **Hatch**. Well, thank you so much. Do you anticipate any major reorganizational efforts under your helm at the Department?

Mr. **Meese**. Senator, I have made no determinations as to any staffing, organization, or procedural changes. I feel it would be presumptuous to do so until such time as the Senate sees fit to confirm me and I actually go to the Department. So I have no ideas and no plans in mind at the present.

Senator **Hatch**. If I could make just one final observation about the attitude of certain members of this committee who have condemned the administration each time it has undertaken legal actions at variance with prior administrations or earlier administrations. I find it ironic that such individuals are generally so enthusiastic about judicial efforts as well as efforts by previous Justice Departments to innovatively and creatively interpret and understand the law.

Why should the Reagan administration be limited to any greater extent. If the Reagan administration is acting in violation of the law or ignoring the law, I think they should be called to task for this.

If, however, they are simply pursuing new interpretations of vague or unclear laws, what is wrong with that? What seems to be wrong with that is that their new interpretations are at odds with the interpretations of the fertile minds of some of our prior administrations. I think there is room for legitimate disagreement in these areas. And I am concerned about the criticisms based upon differences in philosophical belief or policy belief.

I think many of these criticisms are directed toward the conservatism of the present administration. That is what bothers a few of my friends on this panel, but I do not think that they can point to any demonstrated disregard of the law.

So I just want to make that observation and I want to tell you, Mr. Meese, that I feel this is a difficult experience for you. I also know that you have done an outstanding job thus far in these hearings I anticipate you will do equally well through the remainder of these hearings as well. I commend you for it. I am glad to be here with you.

Mr. **Meese**. Thank you, Senator.

Mr. **Hatch**. I reserve the balance of my time, Mr. Chairman.

The **Chairman**. The distinguished Senator from the State of Pennsylvania. I believe he has not participated in round one yet, have you, Senator?

Senator **Specter**. I have not.

The **Chairman**. You may proceed, Senator Specter.

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator **Specter**. Mr. Meese, I would like to discuss with you some of the aspects of criminal law enforcement on violent crime, which I believe is a very vital aspect of the role of the Attorney General's Office and is a subject which you and I have discussed on many occasions in your role as counselor to the President.

The career criminals in this country commit a vast number of the some 4 million burglaries and 470,000 robberies each year. And we know that approximately 10 percent of the criminals commit some 70 percent of the violent crimes. And my question to you is to what extent would the Justice Department under your direction, if confirmed, utilize the resources of the Federal Government in moving against these career criminals?

Mr. MEESE. Senator, I agree with you wholeheartedly about the danger of career criminals to the public safety, and if confirmed, I would see that the resources of the Department were brought into play against that type of crime and those types of criminals in every way possible.

Senator SPECTER. With respect to the problem as to rehabilitation, this is a subject again which you and I have discussed. And my sense is that there needs to be an involvement, especially at the juvenile level, on realistic rehabilitation and also on first offenders, perhaps second offenders, because it is no surprise when we release functional illiterates from jail without a trade or skill that they return to a life of crime.

And then when they become career criminals and commit robberies or burglaries on a repetitive basis, it is my sense that we have to be very tough with them and I know you have expressed your agreement there.

But what role would you see for the Federal Government on dealing with the rehabilitation aspect, especially as it would apply to the juvenile offenders?

Mr. MEESE. Senator, there have been some in recent years who have said that there is no possibility of rehabilitation of those who go to prison. I firmly disagree with this concept. I think that rehabilitation facilities and instruction and other means of providing rehabilitation ought to be available to them because some percentage—I do not think we know exactly what it is—but some percentage of the people who are sentenced to prison can be rehabilitated.

I think the Federal Government, particularly through the National Institute of Corrections, can develop prescriptive packages that can be used by the States thereby bringing wider attention to what has worked to the corrections people around the country, and I think this is a very fertile area.

I think what we have to do is say that there are some people who by virtue of their repeated criminal conduct create a different problem and have to be handled in one way. But for those that you mentioned, particularly juveniles and first offenders, we ought to use the resources of the community and the resources of the State in every way possible to prevent them from carrying on with crime and flowing into a career criminal pattern.

Senator SPECTER. Mr. Meese, the question of justice assistance is pending before the Congress at the present time. It is embodied in Senate bill 53. That is a matter where you have been active on behalf of the administration last year and after some substantial negotiations we worked out a package to have a $100 million program advanced.

That is part of a larger crime package which has been enacted by the Senate. And it may well be that the Justice Assistance Act will be lost if there is not appropriate action in the House of Representatives.

And my question to you is, would you be supportive if we cannot get the broader package through of liberating the Justice Assistance Act at some point in the course of the next several months to see to it that that important piece of legislation is enacted?

Mr. **Meese**. Senator, I am very much committed to that particular legislation. I guess neither of us wants to engage in any strategic discussion with information being given away as to how that might be handled in the House. As you know, I would certainly be agreeable, if confirmed, to working with you and others who are interested in that legislation to make sure that it is enacted as rapidly as possible.

Senator **Specter**. With respect to the Office of Juvenile Justice and Delinquency Prevention, that has been an area of some disagreement between the Congress and the administration. In fiscal year 1981 the program was proposed by the Carter administration to come in in excess of $100 million. And that figure was pared to $70 million in line with efforts for belt tightening across the board.

And the Justice Department has heretofore preferred to eliminate the Office of Juvenile Justice and Delinquency Prevention as a separate item and the Congress has disagreed and we have maintained it at a $70 million level.

This again is something which you and I have discussed, but I think it important to evaluate the matter and to discuss it at this time. And my own view, as you know, is that the Office of Juvenile Justice and Delinquency Prevention ought to be maintained, that it performs a very vital function and it ought to be maintained in a structure which could be flexible but ought to have the resources devoted to the juvenile justice line. And I would be interested in your statements for the record as to your sense of this important issue.

Mr. **Meese**. Senator, my feelings are that the Office of Juvenile Justice and Delinquency Prevention and that function ought to be retained in the Justice Department but, as you suggest, in a more flexible organizational structure within the Office of Justice Assistance, as is contemplated, I believe, in the legislation we talked about a few minutes ago.

I also believe that many of the programs that have been funded under that office do have a great deal of value, and if confirmed, it would be my purpose to review those programs and to work with you and other members of the Congress in carrying forward those programs that have shown promise and been successful.

Senator **Specter**. Mr. Meese, I would like to get your sense on the apsects of plea bargaining from the point of the policy that you would implement in the Department of Justice. My own view, with some experience as a prosecutor, is that plea bargaining has been vastly overused in the United States and that there has been too much attention to trying to clear the dockets to save people's time, as opposed to perhaps expanding the court hours and trying the cases which ought to be tried with a view to getting the appropriate sentence, and that too many concessions have been made along the plea bargaining line.

And a specific case which was of concern to me was one that I wrote to the Justice Department about back on July 30, 1982, and it involved the Matsui Steel Co. where there were very serious charges of criminal fraud. And it had two aspects of particular importance to this Senator. One was the aspect of a very serious crime, which resulted simply in a modest fine compared to the gravamen of the offense.

And the second was that it constituted some very unfair and predatory competition with steelmakers in the United States, and a large number of those originate in the State of Pennsylvania. Now, I realize that you are not prepared to comment about the Matsui dumping case, but I bring that up as illustrative of my sense that the Department of Justice ought to be doing a much tougher job in moving against such kinds of corporate crime. And I would be interested in your view on plea bargaining generally and as it may relate to that case, if you are in a position to comment.

Mr. **Meese.** Senator, I am not able to comment on a particular case and feel it would probably be inappropriate for me to do so at this time, both because I do not have the facts and because, until such time as I am confirmed, I would not have access to the information.

As to the general subject of plea bargaining, let me first address white-collar crime, which you referred to. As I mentioned yesterday, I believe that vigorous enforcement should be directed at white-collar crime, and indeed this is one of the national priorities of the Department at the present time.

I also think that concerning plea bargaining itself, as you know from your experience as a prosecutor, there are times when accepting a lesser plea is important in a particular case perhaps to spare witnesses or because the evidence, while strong, does not guarantee a conviction.

On the other hand, I think I would agree with you that plea bargaining has been perhaps overused in some cases as a means of clearing court dockets, particularly when a part of the plea-bargaining exercise involves a more lenient sentence than is deserved by the facts, as you have suggested is true in the particular case you mentioned. It would be my purpose, if confirmed, to review the entire policy and practice of the Department of Justice in regard to plea bargaining and to make sure that whatever pleas are negotiated—and I think there are cases where it is valuable to do that—are consonant with basic concepts of justice in terms of what the penalty is, the number of counts pleaded to, the facts of the case, and the other factors that should determine whether or not a particular negotiated plea is in the interest of justice.

Senator **Specter.** Mr. Meese, what do you have in mind on the subject of sparing witnesses, something you just referred to?

Mr. **Meese.** Senator, I am thinking of a situation which is more common in trial courts at the State level. For example, if you have a difficult rape case, or some other cases like that, often a negotiated plea is accepted for one or two counts instead of five counts as a means of sparing the witnesses who would otherwise have to testify in open court.

I have seen this done to great advantage, but every time I have been involved in this type of plea negotiation or seen it practiced in the law office in which I was involved, the sentence was always commensurate with the total criminality involved.

Senator SPECTER. Well, my sense is that the sparing of anybody is not wise in a criminal prosecution. I understand what you are saying about some extraordinary cases, in a rape case, for example. But I would hope that the Justice Department would be directly concerned on the sentencing aspect and to see to it that there is no reduction in sentence recommendation or in sentence pushing because that, after all, is the objective of the criminal process.

And I take it from your general description that you agree with that philosophy and would limit plea bargaining to situations where there was an appropriately tough sentence commensurate with the nature of the act and the character of the defendants.

Mr. MEESE. Yes; I would.

Senator SPECTER. On a related subject, we have just had a prosecution on Three Mile Island in Pennsylvania where the prosecution went to the corporation only. And without getting involved in the details of that case, I would be interested in your views on the practice of prosecuting corporations alone without bringing prosecutions against individuals because you and I know that you cannot convict a corporation unless you can establish an act by an individual and the corporation is liable in a criminal trial. But I am concerned—and I do not comment on the TMI case because I do not know the specifics and I think it would be an inappropriate legislative intrusion for a comment to be made there.

But as a general rule I would hope that the Department of Justice would not prosecute only corporations where the penalty level has to be limited to fines. You cannot incarcerate a corporation. And I would be interested in your views as to how you would intend to proceed as to prosecutions against individuals where a corporation may as well be the subject defendant.

Mr. MEESE. Senator, depending obviously on the facts of each case, where the facts show culpability for criminal acts on the part of individuals, I agree that they also should be prosecuted along with the corporation generally.

Senator SPECTER. Mr. Meese, there has been a substantial concern about the Civil Rights Commission as to the consequence of certain of the appointments there, and you and I had discussed that matter when you were kind enough to pay the customary courtesy calls on members of this committee. And it has been my sense right along that the really critical aspect of the Civil Rights Commission issue was in seeing to it that the Civil Rights Commission stayed in existence.

And I thought that the focus of attention on existing members in a critical context, while everybody has a right to criticize whomever they choose, or the other appointments, was secondary, really, to keeping the Civil Rights Commission in existence. And my question to you is: Are you totally committed to the objectives of the Civil Rights Commission and will you as Attorney General vigorously enforce these aspects of the civil rights laws?

Mr MEESE. Yes, Senator; I am committed to the independence and the objectives of the Civil Rights Commission and to its continued existence, an objective that I also sought with you since it was due to go out of existence. And as I have already mentioned during the course of these hearings, I am very much committed to vigorous enforcement of the civil rights laws and would pursue vigorous enforcement of those laws if confirmed.

Senator SPECTER. My own sense was that it was very unfortunate as to what happened with respect to the expectations on appointments. And I have said to the leaders of the civil rights community that it is my thought that a year from now that the civil rights community will be satisfied with the kind of enforcement; that remains to be seen. But I am very concerned that the principles which you have articulated are carried out and are enforced in cooperation with the Department of Justice. And there is one line which I think has been subject to a substantial amount of misunderstanding and it is a matter which you and I discussed and I think it worth putting on the record at the present time.

There has been a lot of debate as to the relative merits of the quota system as opposed to affirmative action as the two competing vehicles for providing opportunities for blacks, browns, the disadvantaged, women of all sorts. And the question which you and I discussed privately was the question as to affirmative action in cases where the two applicants for a job are approximately the same.

I understand your position to be that you do agree that race would be a relevant consideration for a final decision on affirmative action, given the situation of two applicants being approximately the same.

Mr. MEESE. Yes, Senator; under appropriate circumstances, where, as you say, the two applicants are the same and there is a need in a particular area to correct racial imbalance, then I think it would be appropriate and it would be within the meaning of affirmative action as opposed to quotas.

Senator SPECTER. And would your——

The CHAIRMAN. The Senator's time is up.

Senator SPECTER. I shall await the second round. Thank you, Mr. Chairman.

The CHAIRMAN. You are a couple of minutes over.

Senator SPECTER. Thank you. Thank you very much, sir.

Senator KENNEDY. If the Senator wishes to finish the line of thought that he has now, I would be glad to yield to him.

Senator SPECTER. Well, I would appreciate it to expand the question to women as well as blacks, Hispanics, and other minorities, given the situation of approximate parity and the circumstances of need of providing balance. Would the fact that one of the applicants was a woman be a relevant consideration in the ultimate decision of employment on the affirmative action issue?

Mr. MEESE. Yes, sir; it would be.

Senator SPECTER. Thank you very much. Thank you, Mr. Chairman. Thank you, Senator Kennedy.

The CHAIRMAN. The distinguished Senator from Massachusetts.

Senator KENNEDY. Thank you, Mr. Chairman.

As I understand, Mr. Meese, that there have been 123 Federal judges appointed during this administration. Does that figure sound correct to you?

Mr. **Meese**. I do not know the exact number, Senator, but that sounds approximately correct.

Senator **Kennedy**. Do you know how many of these judges were black?

Mr. **Meese**. I do not know how many were black. I do know that of the Federal judges, article III judges, over 7 percent are minorities.

Senator **Kennedy**. Excuse me?

Mr. **Meese**. I said over 7 percent of the article III judges that have been appointed come from minority groups.

Senator **Kennedy**. Well, let us get somewhat more precise. Do you know of the 123 judges whether this administration has appointed one black as a Federal district judge?

Mr. **Meese**. I believe that there has been at least one black.

Senator **Kennedy**. Well, the facts are, you may want to consult with your Justice Department people, because it is my understanding that there has not been one new black Federal judge appointed. There has been one black judge that has been raised from the Federal bench to the circuit court, but appointed by a previous administration.

Does that surprise you?

Senator **Mathias**. Would the Senator yield on that? I feel compelled to set the record straight. Judge Hargrove was recently confirmed by the Senate and was installed and is now sitting on the bench of the U.S. District Court for Maryland.

Mr. **Meese**. That was my understanding also, Senator. Thank you.

Senator **Kennedy**. What is your understanding about the numbers of blacks, before we get into the other minorities?

Mr. **Meese**. Senator, I do not know the exact number of blacks. I do know, as I say, that over 7 percent—I believe it is 7.2 percent—of the judges that have been appointed do come from minority groups.

Senator **Kennedy**. Well, that includes Hispanic as well, obviously?

Mr. **Meese**. I am sure it does; yes, sir.

Senator **Kennedy**. And that includes, as I understand, some five Hispanic judges, three of whom are appointed in Puerto Rico. Does that sound correct to you?

Mr. **Meese**. Senator, I actually do not know, but it does not sound incorrect.

Senator **Kennedy**. It does not sound incorrect.

Mr. **Meese**. It is entirely possible. I just actually do not know each of these judges.

Senator **Kennedy**. Well, and does it also sound plausible to you that all but 17 of the 123 are white male?

Mr. **Meese**. Again, Senator, I do not know the exact number. I do know that 10 percent——

Senator **Kennedy**. I think what we are talking about is general ballpark figures on it. I have been corrected about an individual by one of my colleagues here, about a black who is sitting on the Federal district bench. But the numbers of blacks which have been appointed, as I understand, by this administration, basically you can count on one hand. Would that surprise you if that were the case?

And would you defend that kind of a policy?

Mr. **Meese**. Well, Senator, it would surprise me if you could count them on one hand, in as much as you say there are 123 judges and I know that 7 percent of them are from minority groups.

But I think what is important, as far as defending the record, I believe this administration has tried to work with the Members of the Senate, who propose the candidates for judgeships, to find qualified minority judicial candidates as I said yesterday in response to a question from another Senator, if confirmed, it will be my purpose to continue the policy of the Justice Department to work with Members of the Senate to try to explore ways to bring more minority candidates onto the list of candidates that are considered for Federal judgeships.

Senator **Kennedy**. Well, it is my understanding—and I would like to get it corrected now in fairness to the administration—that only 3 percent of this administration's judicial appointments have been black or Hispanic.

Mr. **Meese**. Senator, I would be glad to check on that during the next recess and get back to you.

Senator **Kennedy**. This is an extremely important issue and I would like to find that out and then get your reaction to it.

Mr. **Meese**. I will defer to the chairman as to whether we want any more witnesses to testify.

Senator **Kennedy**. Well, it is not a witness. I do not know how many Justice Department people are here. I see a number of them myself.

Mr. **Meese**. Senator, I do not see anyone——

The **Chairman**. Senator, I suggest you proceed to other questions and we will try to get this information for you.

Senator **Kennedy**. Would you be comfortable with those percentages, Mr. Meese?

Mr. **Meese**. I do not think, Senator, I would ever be comfortable with percentages until we reached a point where the percentage of minority judges is at least somewhat representative of the number of lawyers involved as a percentage of the total legal profession who might be candidates for those jobs.

Senator **Kennedy**. So if the figures, in terms of the numbers of minorities, are low, say 5 or 7 and 8 percent, you think that that ought to be reflective in terms of the Federal courts and the circuit courts and you would be comfortable with that kind of approximate figure?

Mr. **Meese**. Senator, I think that we ought to look at trying to get as many qualified minorities as possible, but obviously there has to be some statistical correlation between the pool you are drawing and the number that you are appointing.

Senator **Kennedy**. Well, during the previous administration, the percentage of Federal and district judges appointed was 22 percent. As I mentioned, in this administration the figures I have are 3 percent with regards to blacks and Hispanics. In regards to women under this administration, it is 8 percent. I think all of us are obviously impressed by the fact that the administration did appoint the first Supreme Court Justice as a woman.

But we are also mindful that for millions of Americans, their view about the laws is formed in the district courts of this country and in the circuit courts, and the administration, as I understand it, appointed 8 percent and the previous administration 15 percent.

And although I am mindful of the relationship between the Senate and the administration in terms of the selection of judges, I do not think we want the impression left here that this administration just rubber stamps what is recommended by the Members of the Senate because that is not the case. And I wanted to inquire from you whether you were comfortable with what has been done in the past or whether we can get any indication from you that you are going to be more aggressive in terms of at least finding qualified minorities, blacks, Hispanics, others whose skin is not white, and more aggressive in terms of assuring that women are going to be on the court to be truly reflective of our society.

And I was just giving you an opportunity to make whatever comment that you want on that issue at this time.

Mr. **Meese**. Senator, this administration has been very aggressive in attempting to work with the Senators to find qualified minorities and qualified women. I would certainly, if confirmed, want to continue that practice and do my utmost to continue to find those people.

I also think that this situation itself will ease in the future because one of the problems has been, of course, that since about 10 to 12 years is required before a person becomes qualified for the judiciary, according to the American Bar Association standards, and since 10 or 12 years ago there were not that many women in the law schools and 10 or 12 years ago or prior to 10 or 12 years ago there were not that many minorities in law schools. That is a situation which has improved considerably during the past decade, and thus I think that the aggressive action I have described as the objective will be able to help fill the bench with a greater number of people coming from this particular pool of candidates

Senator **Kennedy**. Well, the fact is that regardless of where the numbers were 10 years ago, the previous administration, both with regards to blacks, with regards to Hispanics, with regards to women, found well-qualified candidates for the Federal district court bench and for the circuit courts.

And again the information which I have of the ones that have been recommended by this administration in terms of minorities and women, fall tragically, I think, below what must be expected by the American people if we are going to have a Federal judiciary that is truly representative of the American system.

And I think that the record of this administration should be enormously distressing to anyone who is going to assume the role of Attorney General, and that the nominee for Attorney General should have a commitment to make the Federal judiciary truly more reflective of the American people.

Mr. **Meese**. Senator, I have already indicated that would be my objective.

Senator **Kennedy**. On another issue, Mr. Meese, these comments and statements that you made about the conditions of hunger in our society are familiar to you because they have been quoted back to you on a number of occasions, I believe.

But I think it is important that we just review them very quickly. And if they are not accurate, obviously, I would hope that you would correct them.

Quote: "I don't know of any authoritative figures that there are hungry children. I've heard a lot of anecdotal stuff, but I haven't heard of any authoritative figures."

Quote: "These allegations of hunger have been unsubstantiated until now. Some of the allegations are purely political. I don't believe that I have ever seen an authoritative study on hunger."

I do not know whether you are familiar with the various studies that have been done by a variety of different groups, including the General Accounting Office, and the mayors in our country. Studies that were done in my own State of Massachusetts show that between 10,000 and 17,000 poor children are stunted due largely to chronic malnutrition. And the report says that these children may be suffering from inadequate food intake over a prolonged period of time.

Nearly one-third of the children eligible for food stamps were not receiving benefits; 18 percent of the children eligible for AFDC were not getting the benefits. In addition, most children, they concluded, who were eligible for the special supplementary food program for women, infants, and children, the WIC Program, were left out of this program because of Federal funding limitations.

I myself spent several days in the fall going around this country from the west coast, San Francisco, Minneapolis, and Detroit down to Kentucky, and up in Pittsburgh, and I saw the children out in the lines early on Saturday morning in rain and sleet and snow.

I heard the testimony of the women, one woman who was expecting a child in another 2 or 3 months who was going hungry, very much concerned about whether that child would be born retarded or whether the child would grow up healthy.

I am just wondering, given the recent census figures, about 8 million more Americans falling below the poverty line, I am just wondering whether your views about the hunger in our society have altered and changed and whether you believe that there are hungry children, hungry Americans, and that we have the ability to do something about it and we should be doing something about it.

Mr. **Meese**. Senator, the statement that you quoted of mine stopped short of giving my complete statement, because I went on from where you stopped to say: so if there are hungry children, the question is, why are they hungry? The U.S. Government is spending more on food assistance than it ever has in its history. We are spending it for more categories of people. We are spending it for higher levels of income than we ever have before. And I think the real question is if people are hungry, if there are such individuals and particularly children, then why are they hungry, and I went on to say that it was important to find out the reasons, along the lines that you just indicated have been suggested by these other people.

Is there wrongful administration of the programs that we have now? Are there people who are being left out in some way? It was by no means an insensitivity to the plight of those people who are through no fault of their own hungry or otherwise in need of assistance.

Senator KENNEDY. My time is rapidly expiring. Do you believe that there are hungry children and that there are hungry Americans in our society and that this is a growing problem, given the various studies and information that have been made available?

Mr. MEESE. Senator——

Senator KENNEDY. Would your view about this particular problem be different now from what it was when you made those statements?

Mr. MEESE. Well, it is somewhat different, in as much as the task force on hunger or on food assistance, which I referred to in that same statement that you quoted, has rendered a report and has indicated that some of the problems that——

Senator KENNEDY. What does your gut tell you, Mr. Meese? What does your gut tell you? Are there hungry Americans out there and are you concerned about them? That is what I am interested in.

Mr. MEESE. There are hungry Americans and I am concerned about them. I think that the vast resources we are devoting to this particular subject ought to be used as well as possible to make sure that no person who needs food assistance is without it.

The CHAIRMAN. The distinguished Senator from Nevada.

Senator LAXALT. Mr. Meese, in relation to the position of Attorney General, one of the elements leading to qualification, of course, would be management experience. Never the less, I am not certain in my own mind whether or not that is a high priority because it would depend in great part upon how that agency is structured.

It has been said with some justification that the Justice Department is the largest law firm in the world, and it probably is. Can you recite for the members of the committee what your previous management experience has been?

Mr. MEESE. Senator, I have had experience in managing legal matters as well as in management generally. As head of the Governor's office in California I had management responsibilities, obviously, for the Governor's staff itself. I also had management responsibility at that time for the California National Guard, the Office of Emergency Services, the Office of Criminal Justice Planning, and the Office of Planning and Research; in other words, I had management responsibility for a variety of different governmental entities.

Following that service I was the vice president for administration of Rohr Industries, Inc., and had responsibility for the industrial relations department, the legal department, the public affairs department, the Washington office, and the insurance department of that firm.

I have also organized and managed a criminal justice research center and have served on various management committees of nonprofit organizations—voluntary, private sector initiative type organizations—throughout the country.

In addition to that, in the Federal Government I was one of the architects of the present system of management, as far as the policy and decision making process of the White House is concerned, including the organization of the Cabinet system as it is presently utilized. I also have the experience of chairing the Cabinet Council on Management and Administration and of being involved in most of the management improvement initiatives that have been inaugurated during the past 3 years.

I also have had direct management responsibility within the White House for the Office of Cabinet Affairs, the Office of Policy Development, the Office of Planning and Evaluation, and during that time served as the principal management link between the White House and the departments and agencies of the executive branch.

Senator **Laxalt**. Based upon this previous experience, have you arrived at any particular, singular management philosophy that you would bring to an agency such as the Justice Department?

Mr. **Meese**. Senator, I cannot comment specifically on the Justice Department, because as I previously mentioned, until such time as I am confirmed by the Senate, I feel it would be inappropriate for me to do so, and I have not undertaken a detailed management study of that organization.

But I have a general philosophy of management that includes delegation of responsibility and authority, accountability of department heads and expecting them to know what is going on within their department and management by exception, the philosophy of day to day operations, and a very high premium placed upon management communication on a two way basis.

I would expect, if confirmed, to utilize those basic principles of management philosophy in the Justice Department.

Senator **Laxalt**. To what extent would you consult with this committee regarding major management decisions, particularly those involving matters of policy and personnel?

Mr. **Meese**. Senator, I would, as I mentioned yesterday in my opening statement, look forward, if confirmed, to cooperating to a great extent and as closely as possible with this committee and its members.

I think it is very important that there be a good relationship because the work of this committee is so important to the Justice Department and because the organization and budget of the Department is of great interest to this committee; I would anticipate a very close relationship and particularly a close and informative relationship in terms of keeping the committee informed of plans that might be pending within the Department relating to its organizational structure and management.

Senator **Laxalt**. Is it too early for you to make a statement to this committee as to what proposed major personnel changes you contemplate?

Mr. **Meese**. Yes, it is too early, I believe, Senator. Until such time as the Senate has seen fit to confirm me, I will make no personnel decisions or staffing decisions as far as the Department is concerned.

Senator **Laxalt**. Alluding for a moment to the line of questioning that Senator Kennedy pursued in respect to Federal judges, isn't it true that until a few years ago the selection of Federal judges was left almost entirely to the Members of the Senate?

Mr. **Meese**. That is my understanding, Senator, although I have no personal knowledge of it.

Senator LAXALT. Is it not correct that this practice has been changed substantially in order to include the Justice Department and this committee in the selection process?

Mr. MEESE. Yes, sir, that is correct. During the past 3 years that has been the practice.

Senator LAXALT. And during the course of this particular administration, although the Justice Department does not act as a rubber stamp in connection with the selection of Federal judges, the recommendations of the individual Senators here weighs heavily in the final recommendation made by the Justice Department to the President of the United States; is that true?

Mr. MEESE. That is correct, sir. I would suggest that they receive considerable deference.

Senator LAXALT. Historically, neither the Department of Justice nor the Senate has used any particular quota system, is that not true?

Mr. MEESE. That is correct. The emphasis has been upon selecting qualified persons rather than to try to fill a quota.

Senator LAXALT. I think the point that has to be made and perhaps reemphasized is the one that you made in response to Senator Kennedy's question; surely this administration, and I suppose any administration, would like to have the judiciary more fully representative of the population at large. This would necessarily include a higher percentage of minorities and women.

The fact of the matter is that until the last several years we have not had great numbers of minorities or women in our legal schools. I can recall that in my own law school class we had only one woman. Now, I would like to think that was not too long ago.

However, in the last few years my daughter graduated from law school, and a good half of her classmates were women. Combining that with the criteria that the ABA has properly established, I do not think you could take neophytes in the practice of law, whether or not they are minorities or women, and elevate them to the very important responsibilities of the Federal bench. The ABA has adopted a criterion that an individual should have 10 or 12 years of professional legal experience before they can be seriously considered for the Federal bench.

Is it not that structural problem, and not philosophy or policy, that militates against having a percentage of women judges that matches the percentage of women in the population?

Mr. MEESE. Yes, sir; that is a major reason for it. And I would suggest, as I did earlier, that, as you pointed out, as there is more access to the law schools and more people entering law schools from these categories, there will be a greater pool from which to draw qualified judges in the future.

Senator LAXALT. And there certainly has not been a policy—and I do not think Senator Kennedy intended even to infer this—that women or minorities are not to be appointed to the Federal bench.

Mr. MEESE. No, sir; quite the contrary is true. I think this administration and the Justice Department, to my knowledge, have talked with Senators repeatedly about trying to find qualified women and minority for candidates for these appointments.

Senator LAXALT. I thank the witness. I thank the chairman. And I would like to reserve the balance of my time, Mr. Chairman.

Senator **Mathias** [presiding]. The Senator can reserve the balance of his time.

The Chair recognizes the Senator from Ohio.

Senator **Metzenbaum**. Mr. Meese, I would like to go back to——

Senator **Kennedy**. Would the Senator just yield?

Senator **Metzenbaum**. Of course.

Senator **Kennedy**. Could I ask that the record include the judicial appointments, both of this administration and the previous administration at this point in the record?

Senator **Mathias**. Would the Senator from Massachusetts like for the staff to provide that or is the request made to Mr. Meese?

Senator **Kennedy**. If the staff will provide that, that is fine.

Senator **Mathias**. All right. Without objection, then, the record of judicial appointments made by President Reagan will be included as part of the record.

The Senator from Ohio.

Senator **Metzenbaum**. Mr. Meese, I want to go back to your friendly Great American Bank and ask you what position does Gordon Luce hold at the Great American?

Senator **Mathias**. Would the Senator suspend for just a moment? I have just been handed a memorandum to the effect that there have been 124 article III judges appointed by the Reagan administration. Of these, 2 are blacks, 5 are Hispanics, 1 Asian, 11 women, which comes to precisely 15.5 percent.

Would the Senator from Massachusetts like something further than that?

Senator **Kennedy**. That is right, women, blacks, and Hispanics.

Senator **Mathias**. Blacks, Hispanics, Asians, and women.

Senator **Metzenbaum**. Are those duplicative?

Senator **Kennedy**. Does that include the number of blacks that had been appointed at the Federal level?

Senator **Mathias**. Two.

Senator **Kennedy**. Two out of the one hundred and twenty-four.

Senator **Mathias**. That is correct.

Senator **Kennedy**. If the Senator will just permit me to ask, do you not find that that record, 2 blacks appointed out of 124 to be a disgraceful record, Mr. Meese——

Mr. **Meese**. No, sir, I do not.

Senator **Kennedy** [continuing]. In this country at this time in our history, 2 out of 124?

Mr. **Meese**. Senator, I find that based on the desire and effort of this administration to work with the Senate to find all possible qualified members of all groups, I do not find that disgraceful.

Senator **Metzenbaum**. It could be that Carter used up all the qualified blacks. Maybe that is what he is saying; I do not know.

Senator **Mathias**. The Senator from Ohio.

Senator **Metzenbaum**. I wonder before we go on to that whether the Senator from Maryland could indicate how many of those, as you enumerated them, are, for example, black women or Hispanic women, and therefore the number is used twice?

Senator **Mathias**. That is a refinement in the statistics that I will have to seek further advice on. You are asking about pluralism in this matter.

Senator **Metzenbaum**. That is correct.

All right. Mr. Meese, coming back to Mr. Gordon Luce, who is not a candidate to be appointed to the judiciary, what position does he hold at the Great American?

Mr. **Meese**. I believe he is the chairman of the board.

Senator **Metzenbaum**. And Mr. Luce was a member of Governor Reagan's cabinet in California at one time?

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. And was he not also at one point chairman of the California Republican Party?

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. And was he not appointed to a major position by the President in 1982?

Mr. **Meese**. I do not believe he was appointed to a major position, no, sir. He was appointed to a part-time position on the United Nations delegation, I believe.

Senator **Metzenbaum**. He was named alternate delegate to the United Nations?

Mr. **Meese**. Yes, sir; that is a part-time position.

Senator **Metzenbaum**. Are you acquainted with Mr. Edward Gray?

Mr. **Meese**. I am acquainted with Edwin Gray, yes.

Senator **Metzenbaum**. OK. Edwin Gray. I accept the correction. And did he serve with you in the Reagan administration in California or in Mr. Reagan's cabinet?

Mr. **Meese**. He was not in the cabinet. He was on the Governor's staff as assistant press secretary and then press secretary.

Senator **Metzenbaum**. And did he also serve as an officer of Great American during the period of your business dealings with that firm?

Mr. **Meese**. He served then as a member of San Diego Federal; it was before they became Great American, yes, sir.

Senator **Metzenbaum**. And what was his position there?

Mr. **Meese**. I believe he was a vice president or senior vice president for public affairs

Senator **Metzenbaum**. And he was with them a number of years and you knew him in that capacity?

Mr. **Meese**. I knew him as a social friend. I did not know him in his—I knew he did hold that position, yes.

Senator **Metzenbaum**. And does Mr. Gray now hold a position in the Federal Government by reason of Presidential appointment?

Mr. **Meese**. Yes. He is the chairman of the Federal Home Loan Bank Board, I believe.

Senator **Metzenbaum**. I thank you, Mr. Meese.

Now, let us go back to Great American Bank and to Mr. McHenry's letter of February 17, 1982. There is a sentence in that letter that raises a question. In that letter he states:

> Due to the length of time since your property has been listed and since the last escrow has canceled.

Now do I interpret that to mean that at some point prior to February 1982 you had an offer for the home or some negotiations that got to the point of going into escrow and that they were then canceled?

Mr. **Meese**. Yes, sir; that is correct.

Senator **Metzenbaum**. The Los Angeles Times on February 19 of this year reported as follows:

> Howard's purchase of Meese's home was the second effort arranged by Meese's friends to help financially. An earlier deal involving Gavin Herbert, president of Irvine based Allergan Pharmaceuticals, was called off.

Herbert earlier had been among the purchasers of Casa Pacifica, former President Richard M. Nixon's San Clemente estate. Herbert had planned in the summer of 1982 to buy the Meese home and then deed it to the University of San Diego where Meese had served as director of the Law School Center for Criminal Justice before becoming counselor to the President.

And it goes on to say:

> Meese's associates satisfied themselves that nothing about the Allergan firm could embarrass Meese, but after plans for the Herbert purchase were underway, Meese supporters learned there might be a potential conflict because Allergan was being acquired by Smith-Kline, a giant in the drug industry. The whole deal was called off when it was learned that the Justice Department and the FTC had several open cases involving Smith-Kline, one of those involved in the aborted transaction told the Times.

Do you know Mr. Gavin Herbert?

Mr. **Meese**. I have met him, sir. I do not know him well.

Senator **Metzenbaum**. Would you care to comment on this deal with Mr. Gavin Herbert, how it was made, and how it happened to be called off?

Mr. **Meese**. As I remember, Mr. Herbert, as many others, knew of our financial plight, and since he was in a position where it would be advantageous to him for tax purposes to make a donation such as that, he did undertake to look into the possibility of purchasing the house. I was not sure at the time, if I remember correctly, exactly what he wanted to do with it, but I do not dispute the statement in the paper.

That transaction was going forward to the point of escrow when there was a change in that company's situation because of the Smith-Kline purchase or amalgamation, and I believe it was Mr. Herbert himself who felt that it would be improper to go forward because of the connection and the fact that the Smith-Kline firm had some cases or some other relationship with the Federal Government.

Senator **Metzenbaum**. And that deal had been arranged for you to sort of bail you out of your house and get Herbert to take it off your hands in a tax deal and then give it away. Is that pretty generally what you are saying?

Mr. **Meese**. Like I say, I do not know about what he was going to do, but I think something like that was arranged, yes.

Senator **Metzenbaum**. How did Mr. Herbert know of the transaction? Who dealt with him? What were the circumstances?

Mr. **Meese**. I do not remember who originally suggested that to him, but a lot of people knew of our situation and the financial plight that I faced along with many other appointees at that time.

Senator **Metzenbaum**. Well, give me some idea, because it is just sort of unusual to have a community involvement in the sale of a home. Who else was involved in trying to dispose of your home?

Mr. **Meese**. Well, there were many people. One of them was Pen James, a good friend of mine, who is the one who mentioned it, as stated yesterday, to Mr. Barrack. My former law partners from the San Diego area were interested in assisting.

There were other people who knew of our situation, all of whom were very sympathetic to the situation that we faced.

Senator **METZENBAUM**. Do you have any agreement or understanding about going back to the University of San Diego?

Mr. **MEESE**. I have no formal agreement. The university has said that they would welcome me back if I chose to come back after I finish Government service. I believe that is the situation, but I have no formal agreement with them.

Senator **METZENBAUM**. Well, then I suppose it is possible to conclude that it could have developed, Mr. Herbert buys your home, makes a charitable contribution to the university, you go back to the university and wind up living in your own home.

Mr. **MEESE**. No, sir; that would not be possible and that was never suggested at any time.

Senator **METZENBAUM**. Why not?

Mr. **MEESE**. I do not know, it just was never suggested.

Senator **METZENBAUM**. I say why would it not be possible?

Mr. **MEESE**. It would not be possible because under my arrangement with the university that I had previously I was there like any other professor, on a salary. There is no doubt in my mind that that would not be permitted by the university, to have one professor receiving emoluments that were not generally available to members of the faculty.

Senator **METZENBAUM**. Well, if you came back as a chancellor or the dean or the president, then that arrangement could be worked out, could it not?

Mr. **MEESE**. I have no idea whether it could or not. It certainly was never contemplated, suggested or considered at any time during this transaction.

Senator **METZENBAUM**. All right. Now, you have submitted a statement regarding your relationship with Mr. Thomas Barrack. As I understand that statement, your statement, Mr. Pendleton James, you asked him to help you find a buyer for your home and within a short period of time Mr. Barrack contacts you and says he finds a Mr. Irv Howard to buy it. Is that correct?

Mr. **MEESE**. Well, originally Mr. Barrack contacted me to find out about the home and to find out about the financing and other details. That was on or about the 12th of August, and then some 6 or 8 days later he called me and said that he thought he had a potential buyer for the home in Mr. Howard, yes, sir.

Senator **METZENBAUM**. Now, let me get the picture straight. Mr. Barrack and Mr. Howard live in Santa Inez, CA; is that correct?

Mr. **MEESE**. I do not know where Mr. Howard lives. I know that Mr. Barrack lives there, yes.

Senator **METZENBAUM**. Well, it is my understanding Mr. Howard does indeed live in Santa Inez. And Santa Inez is how far from La Mesa?

Mr. **MEESE**. Oh, it is approximately 300 miles.

Senator **METZENBAUM**. Are you aware of any business dealings or real estate holdings that either Barrack or Howard have in the San Diego area?

Mr. MEESE. I am not aware of it. It was indicated to me that Mr. Howard was planning to go into business in the San Diego area at about this time.

Senator METZENBAUM. Now, Mr. Meese, I have here some xerox pages that were among the material you submitted to the committee. They appear to be in your handwriting and I am going to ask a member of my staff to bring them down and ask if you would verify that these are indeed in your handwriting.

Senator MATHIAS. Would the Senator from Ohio advise the Chair whether those have been included in the record or whether these are new documents.

Senator METZENBAUM. I believe that they are in the record. These are copies of documents that we received from you, Duke.

Mr. SHORT. No, sir. That particular document has not been included, but it could be at this time.

Senator METZENBAUM. When I get to it, I certainly have no objection. I just want to have it identified first.

Mr. MEESE. I am referring now to three documents that have the writing on them 3A, 3B, and 3C.

Senator METZENBAUM. That is my writing, that part.

Mr. MEESE. And these documents, other than that notation, appear to be in my handwriting.

Senator METZENBAUM. I thank you. May I have them, please. Now, the first one, for purposes of identification, I will refer to as 3A, lists Tom Barrack's name and address in Los Angeles and a home and office telephone number. Is that your recollection of it? Do you have copies of them there?

Mr. MEESE. I do not have copies here, but——

Senator METZENBAUM. Do you accept my representation?

Mr. MEESE. I accept your representation, and I do remember that as being what is on the document.

Senator METZENBAUM. Now, the second page appears to be a record of a phone call at 8:50 p.m., August 12, 1982, with Tom Barrack. And it appears it has to do with instructions on getting a key for a house.

Do you have some recollection of that?

Mr. MEESE. Yes, sir; I believe that is document 3C.

Senator METZENBAUM. 3C is correct.

Mr. MEESE. And I do remember that. That was a phone call I received. He was interested in looking at the property and that was my record of the telephone call at that time.

Senator METZENBAUM. Now, you made these notes while you were in Washington?

Mr. MEESE. Yes, sir; I believe those were made at my home.

Senator METZENBAUM. And we have a full page of writing.

Mr. MEESE. To be specific, sir, I think I was actually in McLean, VA at the time I made those; if you are referring to my being in this general area, the answer is, "yes."

Senator METZENBAUM. Yes. Now, we have a page full of writing on a page that I have identified as page 3B. It is the record of a phone conversation on August 18, 1982, at 8:50 p.m. with Barrack. And I will read you that.

It starts off, "Tom, ofc," and then it gives a telephone number, home telephone number, 18 August 1982, 8:50 p.m.

Then reads, "Buyer [financially capable] with son to reside. Open issue-trusteeship."

Then it says, "Jim, avoids publicity, builders one level of TX." And then "Tom and Lee: Arms length TX. Trust raises more problems. Compromise, Lee as trustee."

Mr. Meese, what is this all about? What is this trusteeship about, avoiding of publicity?

Mr. **MEESE**. These were notes that I made at the time as to our conversation since there were people in San Diego that were talking on my behalf. Lee Knutson is the name of the person described as Lee; he was dealing with Mr. Barrack on this matter and with Mr. Howard.

Senator **METZENBAUM**. Who is Jim?

Mr. **MEESE**. I do not know. I would imagine that might be Jim Schmidt.

Senator **METZENBAUM**. And the whole question about—Jim Schmidt is who?

Mr. **MEESE**. Jim Schmidt is an officer of Great American Federal.

Senator **METZENBAUM**. Well, why would his name be here, since this is a message, a notation of a conversation you had with Tom Barrack?

Mr. **MEESE**. I imagine that Mr. Barrack had been in touch both with my former law firm and with the savings and loan as to this whole transaction.

Senator **METZENBAUM**. Now, you were only trying to sell your house, and there are notes referring to avoiding publicity and making it arms length and then it goes on to recite the name of the buyer, Irv Howard, age, 53 to 54, three sons, talks about the price, $300,000, $240,000 loan, $60,000 down payment.

Then it goes on to say, "AM, one, call Jim Schmidt; two, advise Tom; three, call Lee Knutson."

Now, at the beginning of these hearings you were careful to point out you had no personal knowledge about Mr. Howard's financing.

"First of all, I do not know the amount, of my own knowledge," this is your testimony now,

> Of the Howard loan, since he took that out totally separate from any knowledge on my part, nor do I know for what price he sold the property in June of 1983 or any profit or loss he might have had at that time.

Now, as a matter of fact when you testified that you did not know about the loan, at this point it would appear that it was very much a part of the whole transaction and that somehow in mentioning Jim Schmidt, it looks as if the whole arrangement was being put together through Great American, through your friends, and that there is an effort to avoid publicity.

Normally selling a house does not bring about any publicity unless there is something unusual about it.

Mr. **MEESE**. Not at all, Senator. The sale of my house, about which there was nothing unusual, has brought a lot of publicity.

Senator **METZENBAUM**. That is before you were to be appointed Attorney General. As a matter of fact, the publicity did not arise until July 1983. So there was no publicity back at that time. There had been none earlier than that, and there was no reason to anticipate any publicity in connection with the sale of your home unless there was something unusual.

Now, this whole matter of a trusteeship and the trust raises more problems, it almost looks as if you were structuring a deal. And we know the Gavin Herbert deal was put together by your friends. And then that was called off, and the question that I have is was this a structured deal and was it just put together for your benefit, and as you well know, just a few months after Mr. Howard bought the property he sold it and lost something like $50,000.

Now, I am really trying to find out, was this a legitimate business deal or was this a structured deal?

Mr. **MEESE**. Senator, it was absolutely a legitimate business deal.

Senator **METZENBAUM**. Well, why did you have the trusteeship?

Senator **MATHIAS**. The time of the Senator from Ohio has expired.

Senator **METZENBAUM**. Fine. And I understand there will be a number of other rounds so that the Senator from Ohio will have another opportunity?

Senator **MATHIAS**. I certainly hope so.

Senator **METZENBAUM**. I am looking forward to it. Thank you.

Senator **MATHIAS**. The Senator from Montana.

LIMITING FEDERAL COURT JURISDICTION OVER CONSTITUTIONAL ISSUES

Senator **BAUCUS**. Thank you, Mr. Chairman.

Mr. Meese, as you know, there are lots of efforts these days to amend the Constitution. That has happened because many Americans believe that our society has changed and that the Constitution accordingly should also change.

Our Founding Fathers provided for a certain way to amend the Constitution—that is there is a constitutional amendment process where both Houses of Congress by a two-thirds vote pass a proposed constitutional amendment, which is then ratified, if it is at all, by three-quarters of the States.

But that process is a bit difficult. It is laborious. It takes time. It requires super majorities in both the Congress and among the State legislatures. It is for that reason, because of that difficulty, that some Members of Congress have attempted to deprive the Supreme Court of jurisdiction over Federal constitutional questions by simple statute instead of by constitutional amendment.

That is, because it is difficult to amend the Constitution with respect to school prayer or busing or abortion or any of the various constitutional provisions, some Members of Congress have introduced legislation which in effect tries to reach that same result by denying the Supreme Court jurisdiction over a specific Federal constitutional question.

As you probably know, the present Attorney General in a letter dated May 6, 1982 sent to Chairman Thurmond concerning the power of Congress to defy and circumscribe the role of Federal courts. And in that letter Attorney General Smith stated, and I quote:

> Congress may not, however, consistent with the Constitution, make "exceptions" to Supreme Court jurisdiction which would intrude upon the core functions of the Supreme Court as an independent and equal branch in our system of separation of powers.

I am sure you also know that eminent jurists like Judge Bork, and the present Justice of the Supreme Court, Sandra Day O'Connor, when they testified before this committee, stated their belief that Congress cannot constitutionally deprive the Supreme Court of jurisdiction over Federal constitutional questions.

My question to you is whether you have a personal opinion as to whether Congress may constitutionally deprive the U.S. Supreme Court of jurisdiction over Federal constitutional questions.

Mr. MEESE. Senator, I have not personally done an exhaustive legal research on that subject, but I have read the documents that you referred to, particularly the letter written by Attorney General William French Smith, the statement in congressional hearings, I believe, of Justice O'Connor, and also the statement of Judge Bork. And I subscribe to the views that they put forth, that it is improper for the Congress to attempt to diminish or take away the core functions of the Supreme Court.

Senator BAUCUS. Now, you say improper. Does that mean you think it is constitutionally impermissible? Is that your reason? Or do you think that in addition to being constitutionally impermissible, as a matter of public policy it would be improper to so attempt to limit the Supreme Court?

Mr. MEESE. I think it would be unwise as well as impermissible under the Constitution.

Senator BAUCUS. What about lower Federal court jurisdiction? Do you think that it is constitutionally impermissible to restrict lower Federal court jurisdiction?

Mr. MEESE. I think that the Congress has a greater latitude there because of the provisions of the Constitution that provide that the Congress shall prescribe the rules and regulations for the courts and its jurisdiction. I think that you perhaps have a different situation from the Supreme Court.

As to the wisdom, I think that it is always very questionable to limit the jurisdiction of the courts on particular policy issues, because if we get into the idea of changing judicial jurisdiction based upon what may be in vogue at a particular time, we add to the instability in the courts, which is one of the matters that other people have commented on, particularly Senator Hatch earlier, as one of the problems with the courts trying to make the law.

Senator BAUCUS. So, as I understand your answer, then, you think it is clearly unconstitutional for Congress to attempt to prevent the Supreme Court from having jurisdiction over a Federal constitutional question and that it is probably unwise for Congress to attempt to limit lower Federal court jurisdiction over a Federal constitutional question.

Mr. MEESE. I would say as a general rule, yes, Senator. Obviously as to the latter part, the lower Federal courts, it would depend clearly on the specific case, the specific subject, and the specific proposal.

Senator BAUCUS. If Congress attempted to limit the Supreme Court jurisdiction over, say, school prayer, busing, abortion, the right to bear arms, any provision that is contained in the Constitution, it is your view that that is unconstitutional: That is, that Congress may not constitutionally attempt to limit Supreme Court jurisdiction over any of those issues.

Mr. **Meese**. Again, as I said, I have not done an independent legal study of this, but I would rely on the research done by the Justice Department under Attorney General Smith, concerning the core functions; and I believe that these topics would come within this jurisdiction of the Supreme Court.

Senator **Baucus**. If you are confirmed as Attorney General of the United States and if Congress were by statute, by majority vote, attempt such an effort to limit Supreme Court jurisdiction over a Federal constitutional question, would you recommend that the President veto that legislation?

Mr. **Meese**. If confirmed and if I felt that the legislation did violate the Constitution and was a core function of the Supreme Court, then I believe in that situation I would recommend a veto, yes, sir.

Senator **Baucus**. I appreciate that. I agree with your views and I thank you for your statement.

Mr. Chairman, I would like the record to include the letter from Attorney General Smith to Chairman Thurmond, if I might at this point.

The **Chairman**. Without objection, so ordered.

[Material referred to follows:]

Office of the Attorney General
Washington, D.C. 20530

May 6, 1982

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C.

Dear Mr. Chairman:

This letter is written to you as Chairman of the Committee on the Judiciary. It is written in response to a number of earlier inquiries from members of your Committee concerning S. 1742, a proposal which would withdraw jurisdiction from the Supreme Court to consider "any case arising out of any State statute, ordinance, rule, [or] regulation . . . which relates to voluntary prayers in public schools and public buildings." A second provision of the bill would withdraw the jurisdiction of the district courts over any case in which the Supreme Court has been deprived of jurisdiction. This bill raises fundamental and difficult questions regarding the role of the Supreme Court in our constitutional system, as well as the power of Congress to define and circumscribe that role. The issues involved have been the subject of intense scholarly debate and prominent constitutional scholars have differed as to the extent of congressional power to limit Supreme Court jurisdiction.

This is perhaps to be expected since the question of congressional power over the appellate jurisdiction of the Supreme Court implicates in a basic way the relations between Congress and the Supreme Court, two co-equal branches of government. Relations between the different branches in our tripartite system are generally governed by the doctrine of separation of powers. Neither the Constitution nor the decisions of the Supreme Court have attempted to define the precise contours of this doctrine. As two astute students of our constitutional system have noted:

> The accommodations among the three branches of government are not automatic. They are undefined, and in the very nature of things could not have been defined, by the Constitution. To speak of *lines* of demarcation is to use an inapt figure. There are *vast* stretches of ambiguous territory. Frankfurter & Landis, *Power of Congress Over Procedure in Criminal Contempts in "Inferior" Federal Courts*, 37 Harv. L. Rev. 1010, 1016 (1924) (emphasis in original).

The doctrine of separation of powers touches fundamentally on how the Nation is governed, and, as the Supreme Court noted last Term in a separation of powers case, "it is doubtless both futile and perhaps dangerous to find any epigrammatical explanation of how this country has been governed." *Dames & Moore v. Regan*, 101 S. Ct. 2972, 2977 (1981). In this area more than any other we must heed Justice Holmes' wise admonition that "[t]he great ordinances of the Constitution do not establish and divide fields of black and white." *Springer v. Philippine Islands*, 277 U.S. 189, 209 (1928) (dissenting opinion).

There is no doubt that Congress possesses some power to regulate the appellate jurisdiction of the Supreme Court. The language of the Constitution authorizes Supreme Court appellate jurisdiction over enumerated types of cases "with such Exceptions, and under such Regulations as the Congress shall make." The Supreme Court has upheld the congressional exercise of power under this clause, even beyond widely accepted "housekeeping" matters such as time limits on the filing of appeals and minimum jurisdictional amounts in controversy. See Ex parte McCardle, 74 U.S. (7 Wall.) 506 (1869).

Congress may not, however, consistent with the Constitution, make "exceptions" to Supreme Court jurisdiction which would intrude upon the core functions of the Supreme Court as an independent and equal branch in our system of separation of powers.

In determining whether a given exception would intrude upon the core functions of the Supreme Court, it is necessary to consider a number of factors, such as whether the exception covers constitutional or nonconstitutional questions, the extent to which the subject is one which by its nature requires uniformity or permits diversity among the different states and different parts of the country, the extent to which Supreme Court review is necessary to ensure the supremacy of federal law, and whether other forums or remedies have been left in place so that the intrusion can properly be characterized as an exception.

Concluding that Congress may not intrude upon the core functions of the Supreme Court is not to suggest that the Supreme Court and the inferior federal courts have not occasionally exceeded the properly restrained judicial role envisaged by the Framers of our Constitution. Nor does such a conclusion imply an endorsement of the soundness of some of the judicial decisions which have given rise to various of the legislative proposals now before Congress. The Department of Justice will continue, through its litigating efforts, to urge the courts not to intrude into areas that properly belong to the State legislatures and to Congress. The remedy for judicial overreaching, however, is not to restrict the Supreme Court's jurisdiction over those cases which are central to the core functions of the Court in our system of government. This remedy would in many ways create problems equally or more severe than those which the measure seeks to rectify. 1/

1/ The Department of Justice, in previous Administrations, has consistently opposed proposals to restrict Supreme Court jurisdiction. See Hearings Before the Subcomm. To Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Sen. Comm. on the Judiciary, 85th Cong., 2d Sess. 573-74 (1958)(statement of Attorney Genernal Rogers)("full and unimpaired appellate jurisdiction of the Supreme Court is fundamental under our system of government"); Memorandum for the Attorney General from Assistant Attorney General Malcolm R. Wilkey, Office of Legal Counsel (February 25, 1958) (bills to limit Supreme Court jurisdiction are constitutional but bad policy); Memorandum for the Deputy Attorney General from Assistant Attorney General Tompkins, Internal Security Division (February 14, 1958) (unconstitutional); Letter to Sen. James O. Eastland, Chairman, Senate Comm. on the Judiciary, from Deputy Attorney General Richard Kleindienst (September 4, 1969)(not clearly distinguishing constitutional and policy objections); Memorandum for the Attorney General from Assistant Attorney General William H. Rehnquist (September 16, 1969) (not clearly distinguishing constitutional and policy objections); letter from Assistant Attorney General Alan Parker to Rep. Peter Rodino, Chairman, House Comm. on the Judiciary (June 19, 1980)(unconstitutional); Prayer in Public Schools and Buildings, Hearings Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary, 96th Cong., 2d Sess. 11 (1980) (testimony of John M. Harmon, Assistant Attorney General, Office of Legal Counsel) (unconstitutional).

With respect to other pending legislation, the Department of Justice has concluded that Congress may, within constraints imposed by provisions of the Constitution other than Article III, limit the jurisdiction or remedial authority of the inferior federal courts. See letter from the Attorney General to Chairman Rodino concerning S. 951. The question of congressional power over lower federal courts is quite different from the question of congressional power over Supreme Court jurisdiction, and the two issues should not be confused.

I.

Proponents of congressional constitutional authority to limit the Supreme Court's entire appellate jurisdiction have contended that such authority exists under the "Exceptions Clause" of Article III of the Constitution. Article III provides, in pertinent part:

> Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. . . .
>
> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; -- to all Cases affecting Ambassadors, other public Ministers and Consuls; -- to all cases of admiralty and maritime Jurisdiction; -- to Controversies to which the United States shall be a Party; -- to Controversies between two or more States; -- between Citizens of different States; -- between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.
>
> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. (Emphasis added.)

The language of the Exceptions Clause, underscored above, does not support the conclusion that Congress possesses plenary authority to remove the Supreme Court's appellate jurisdiction over all cases within that jurisdiction. The concept of an "exception" was understood by the Framers, as it is defined today, as meaning an exclusion from a general rule or law. An "exception" cannot, as a matter of plain language, be read so broadly as to swallow the general rule in terms of which it is defined.

The Constitution, unlike a statute, is not drafted with specific situations in mind. Designed as the fundamental charter of our political system, its most important provisions are phrased in broad and general terms. As eloquently expressed by Justice Holmes in Missouri v. Holland, 252 U.S. 416, 433 (1920):

> [W]hen we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation. The case before us must be considered in light of our whole experience and not merely in that of what was said a hundred years ago.

For example, a literal interpretation of Article III as a whole would seem to mandate that Congress vest the full judicial power of the United States either in the Supreme Court or in an inferior federal court. Under such an interpretation, Congress could make "exceptions" to the Supreme Court's appellate jurisdiction only if it vested the jurisdiction at issue either in an inferior federal court or in the Supreme Court's original jurisdiction. This interpretation, which would require the conclusion that any measure which entirely ousted the federal courts from exercising any portion of the judicial power of the United States and vested that authority in state courts would be unconstitutional, is rejected by all authorities today. 2/

The Constitution contains a number of other pronouncements which, although seemingly unambiguous and absolute, have necessarily been interpreted as limited in their applicability. See, e.g., Home Building & Loan Ass'n. v. Blaisdell, 290 U.S. 398 (1934)(Contract Clause); Everson v. Board of Education, 330 U.S. 1 (1947)(Establishment Clause); Reynolds v. United States, 98 U.S. 145 (1878)(Free Exercise Clause); Brandenburg v. Ohio, 395 U.S. 444 (1969)(per curiam)(Free Speech Clause). The Supreme Court has also recognized that even when a statute is otherwise within a power granted to Congress by the Constitution, extrinsic limitations on congressional power contained in the Bill of Rights or elsewhere may nevertheless render the statute unconstitutional. See, e.g., National League of Cities v. Usery, 426 U.S. 833 (1976)(limitations on Commerce Clause); McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 421 (1819)(limitations on Necessary and Proper Clause).

In light of these principles of constitutional interpretation, the Exceptions Clause may not be analyzed in a vacuum but must be understood in terms of Article III as a whole, as evidenced by the history of its framing and ratification, its place in the system of separation of powers embodied in the structure of the Constitution, and its consistency with external limitations on congressional power implicit in the Constitution and contained in the Bill of Rights. The construction of the Exceptions Clause that is most consistent both with the plain language of the Clause and with other evidence of its meaning is that Congress can limit the Supreme Court's appellate jurisdiction only up to the point where it impairs the Court's core functions in the constitutional scheme.

II.

The events at the Constitutional Convention support a construction of the Exceptions Clause that would preclude Congress from interfering with the Supreme Court's core functions. The Framers agreed without dissent on the necessity of a Supreme Court to secure national rights and the uniformity of judgments. The Resolves which were agreed to by the Convention and given to the Committee of Detail provided, simply, that "the jurisdiction [of the Supreme Court] shall extend to all cases arising under the Natl. laws: And to such other questions as may involve the Natl. peace & harmony." No mention was made of any congressional power to make exceptions to the Court's jurisdiction. The Committee of Detail, charged with drafting a provision to implement these Resolves, proposed the language of the Exceptions Clause. It seems unlikely that the Committee of Detail could have deviated so dramatically from the Convention's Resolves as to have given Congress the authority to interfere with the Supreme Court's core functions without considerably more attention to the subject at the Convention.

2/ Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803), established that Congress has no authority to enlarge the Supreme Court's original jurisdiction by creating "exceptions" to its appellate jurisdiction. In Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 330-31 (1816), Justice Story argued that, if Congress creates any inferior federal courts, it must confer on them the full federal jurisdiction. This view, however, has never since been accepted by a majority of the Supreme Court.

This inference is strengthened by the events surrounding the adoption of the Judicial Article by the full Convention. In determining the scope of the Court's jurisdiction, the Convention agreed to provisions expressly confirming that the jurisdiction included cases arising under the Constitution and treaties; but it rejected, by a 6-2 vote, a resolution providing that, except in the narrow class of cases under the Court's original jurisdiction, "the judicial power shall be exercised in such manner as the Legislature shall direct." 3/ The Convention thus rejected a clear statement of plenary congressional power over the Court's appellate jurisdiction. Nevertheless, on the same day -- without any recorded debate or explanation -- the Framers adopted the Exceptions and Regulations language now contained in Article III. In light of the value placed on the Supreme Court's appellate jurisdiction, as evidenced by the other actions of the Convention, it seems highly unlikely that the Framers would have agreed, without the slightest hint of controversy, to a provision that would authorize Congress to interfere with the Court's core constitutional functions.

There are additional reasons why the lack of controversy surrounding the adoption of the Exceptions Clause supports the inference that no power to intrude on the Court's core functions was intended. First, the historical materials show the great importance which the Framers attached to these functions. They envisaged that the Supreme Court was a necessary part of the constitutional scheme and believed that the Court would review state and federal laws for consistency with the Constitution. 4/ These sentiments were echoed by the authors of the *Federalist Papers*, a work which is justly regarded as an important guide to the meaning of the Constitution. 5/ In light of this explicit recognition by the Founding Fathers of the Court's vital role in the constitutional scheme, it seems unlikely that they would have adopted, without controversy, a provision which would effectively authorize Congress to eliminate the Court's core functions.

A second reason for inferring a more limited construction of the Exceptions Clause from the lack of discussion at the Convention concerns the compromise agreed to by the Framers regarding the establishment of inferior federal courts. While the necessity of a Supreme Court was accepted without significant dissent among the Framers, there was vigorous disagreement over whether inferior federal courts should be provided. The Convention first approved a provision calling for mandatory inferior federal courts, then struck this provision by a divided vote, and finally determined to leave to Congress the question whether to establish inferior federal courts. The Supreme Court was viewed as a necessary part of the constitutional structure and was established by the Constitution itself; Congress was given no control over whether the Court would be created. The inferior federal courts, however, were viewed as an optional part of the Government and were authorized but not established by the Constitution. The decision whether to create them was given to Congress. This distinction, and the role explicitly assigned to Congress with respect to the inferior federal courts, implies that the powers of Congress were to be quite different with respect to the Supreme Court and the inferior federal courts.

3/ 2 M. Farrand, *The Records of the Federal Convention of 1787* 76 (1911).

4/ *See*, *e.g.*, 1 *id*. at 124; 2 *id*. at 589 (Madison).

5/ *See*, *e.g.*, *Federalist* No. 39 (Madison)(Supreme Court is "clearly essential to prevent an appeal to the sword and a dissolution of the compact"); *id*. No. 80 (Hamilton); *id*. No. 82 (Hamilton).

If the Exceptions Clause authorized Congress to eliminate the Supreme Court's appellate jurisdiction, thus limiting it to the exercise of original jurisdiction, the power of Congress over the Supreme Court would be virtually indistinguishable from its power over inferior federal courts. Just as Congress could decline to create inferior federal courts, it could, in the guise of creating "exceptions" to the Supreme Court's appellate jurisdiction, deny the Supreme Court the vast majority of the judicial powers which the Framers insisted "shall be vested" in the federal judiciary. Congress could not eliminate the Supreme Court, but it could reduce it to a position of virtual impotence with only its limited original jurisdiction remaining. Such an interpretation cannot be squared with the stark difference in treatment which the Framers accorded to the Supreme Court and the inferior federal courts. Given the intensity of the debate regarding inferior federal courts, and the compromise arrived at by the Framers, it seems highly unlikely that the Convention would have adopted without comment a provision which, for most practical purposes, would place the Supreme Court and the inferior federal courts in the same position vis-a-vis Congress.

A third reason to infer a limited construction of the Exceptions Clause from the lack of debate accompanying its adoption is found in the theory of separation of powers which formed the conceptual foundation for the system of government adopted by the Convention. The Framers intended that each of the three branches of Government would operate largely independently of the others and would check and balance the other Branches. The purpose of this approach was to ensure that governmental power did not become concentrated in the hands of any one individual or group, and thereby to avoid the danger of tyranny which the Framers believed inevitably accompanied unchecked governmental power. Indeed, it is not an exaggeration to say that the single greatest fear of the Founding Fathers was tyranny, and that concentration of power was, in their minds, "the very definition of tyranny." 6/

Essential to the principle of separation of powers was the proposition that no one Branch of Government should have the power to eliminate the fundamental constitutional role of either of the other Branches. As Madison stated in Federalist No. 51:

> [T]he great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack.

This basic principle of the Constitution -- that each branch must be given the necessary means to defend itself against the encroachments of the two other branches -- has special relevance in the context of legislative attempts to restrict judicial authority. The Framers "applaud[ed] the wisdom of those states who have committed the judicial power, in the last resort, not to a part of the legislature, but to distinct and independent bodies of men." Federalist No. 81 (Hamilton). They believed that, by the inherent nature of their power, the legislature would tend to be the strongest and the judiciary the weakest of the Branches. This insight is reflected in the very structure of the Constitution: the provisions governing the legislature are placed first, in Article I; those establishing and governing the Judicial Branch are in the third position, in Article III. Madison recognized the great inherent power of the Legislative Branch in Federalist No. 48. Drawing extensively from Jefferson's Notes on the State of Virginia, Madison concluded that in a representative republic "[t]he legislative department is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex." See also Federalist No. 51 (Madison).

6/ Federalist No. 47 (Madison).

It was in no sense a derogation on the concept of governance responsive to popular will that the Founding Fathers desired checks on the power of the Legislature they were creating. The Acts of Parliament as well as those of the King formed the litany of grievances which produced the Revolution. The Founding Fathers believed in the voice of the people and their elected representatives and placed substantial power in the Legislature. At the same time, however, they were acutely sensitive to the rights of individuals and minorities. Most of them had first-hand experience with persecution. The idea of a written Constitution was precisely to place a check on the popular will and, in large part, to restrain the most powerful Branch. They crafted a representative republic with restraints on the legislature. "[A]n elective despotism was not the government we fought for . . . ." Federalist No. 48 (Madison), quoting Jefferson's Notes on the State of Virginia (emphasis in original).

The Supreme Court was viewed as a part of this restraint, but, nonetheless, inherently as the least dangerous Branch. Hamilton, in a famous passage from Federalist No. 78, eloquently testified to the inherent weakness of the Judicial Branch:

> Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors but holds the sword of the community. The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

As a consequence of this view, Hamilton believed that it was necessary for the judiciary to remain "truly distinct from the Legislature and the Executive. For I agree that 'there is no liberty, if the power of judging be not separated from the legislative and executive powers.'" Id., quoting Montesquieu's Spirit of Laws. Thus, he concluded: "The complete independence of the courts of justice is peculiarly essential in a limited Constitution." Id.

It was in recognition of the inherent weakness of the judiciary, particularly as contrasted with the inherent power of the legislature, that the Framers determined to give special protections to the judiciary not enjoyed by officials of the other Branches. Federal judges were given lifetime positions during good behavior, and were protected against diminution of salary while in office. The purpose of these provisions was largely to provide the judiciary, as the weakest Branch, with the necessary tools for self-protection against the encroachments of the other Branches.

The notion that the Exceptions Clause grants Congress plenary authority over the Supreme Court's appellate jurisdiction cannot easily be reconciled with these principles of separation of powers. If Congress had such authority, it could reduce the Supreme Court to a position of impotence in the tripartite constitutional scheme. The Court could be deprived of its ability to protect its core constitutional functions against the power of Congress. The salary and tenure protections so carefully crafted in Article III could be rendered virtually meaningless in light of the power of the Congress simply to eliminate appellate jurisdiction altogether, or in those areas where the Court's decisions displeased the legislature. It is significant that while the Framers did not focus on the Exceptions Clause, they did point to the impeachment power as "a complete security" against risks of "a series of deliberate usurpations on the authority of the legislature." Federalist No. 81.

In light of these basic considerations, it seems unlikely that the Framers intended the Exceptions Clause to empower Congress to impair the Supreme Court's core functions in the constitutional scheme. Even if some of the Framers could have intended this, it is improbable that the Exceptions Clause could have been approved by the Convention without debate or controversy, or indeed without any explicit statement by anyone associated with the framing or ratification of the Constitution that such a deviation from the carefully crafted separation of powers mechanisms provided elsewhere in the Constitution was intended. Nor does it seem likely that the Convention would have developed the Exceptions Clause as a check on the Supreme Court in such a manner that an exercise of power under the Clause to remove Supreme Court appellate jurisdiction would not return authority to Congress, but vest it in the state courts instead. Hamilton regarded even the possibility of multiple courts of final jurisdiction as unacceptable.

> The mere necessity of uniformity in the interpretation of the national laws, decides the question. Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed. Federalist No. 80.

Thus, unless there is sound and compelling evidence of a contrary interpretation in the decisions of the Supreme Court, or in the long-accepted historical practices regarding congressional control of Supreme Court jurisdiction, it must be concluded that the Exceptions Clause does not authorize Congress to interfere with the Court's core functions in our constitutional system.

III.

An examination of the Supreme Court's cases does not require any different interpretation. The Supreme Court has provided only inconclusive guidance on the meaning of the Exceptions Clause. In Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304 (1816), the Court noted "the importance, and even the necessity of uniformity of decisions throughout the whole United States upon all subjects within the purview of the constitution." In the absence of the Supreme Court, Justice Story observed, "the laws, the treaties and the Constitution of the United States would be different, in different states . . . . The public mischiefs that would attend such a state of things would be truly deplorable; for it cannot be believed, that they could have escaped the enlightened convention which formed the Constitution . . . . [T]he appellate jurisdiction must continue to be the only adequate remedy for such evils." Similar statements are found in the opinions of Chief Justice Marshall, Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 415 (1821), and Chief Justice Taney, Ableman v. Booth, 62 U.S. (21 How.) 506, 517-18 (1858). 8/ Although these cases do not squarely address the question whether Congress could constitutionally deprive the Court of its core functions, the Court's language seems strong enough to cast considerable doubt, at least by implication, on the power of

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8/ Cf. the famous statement of Justice Holmes:

> I do not think the United States would come to an end if we lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that determination as to the laws of the several states.

O.W. Holmes, Collected Legal Papers 295 (1920).

Congress to eliminate Supreme Court jurisdiction over cases in which a final, uniform and supreme voice is necessary in the guise of creating "exceptions" to that jurisdiction. In the words of Chief Justice Taney, the exercise of such a power would withdraw authority which is "essential . . . to [the] very existence [of the Federal] government [and] essential to secure the independence and supremacy of [that] Government." *Id*.

The Supreme Court has, in a number of early cases, referred to the power of Congress over its appellate jurisdiction as being quite broad. For example, in *Barry v. Mercein*, 46 U.S. (5 How.) 103 (1847), the Court stated that "[i]f Congress has provided no rule to regulate our proceedings, we cannot exercise our appellate jurisdiction, and if the rule is provided, we cannot depart from it." *See also The "Francis Wright,"* 105 U.S. 381, 386 (1881); *Daniels v. Railroad Co.*, 70 U.S. (3 Wall.) 250, 254 (1865); *Durousseau v. United States*, 10 U.S. (6 Cranch) 307, 313-14 (1810); *United States v. More*, 7 U.S. (3 Cranch) 159 (1805); *Wiscart v. Dauchy*, 3 U.S. (3 Dall.) 321, 327 (1796). However, every one of these statements is *dicta*; the Court has never held that Congress has the power entirely to preclude the Court from exercising its core functions. It may also be doubted whether these broad statements are intended to cover cases in which such an extraordinary congressional power was exercised. They may instead be designed to recognize a broad power which, like the Commerce Clause, is limited by other provisions of the Constitution and by the structure of the document as a whole.

Proponents of the "plenary power" thesis rely most heavily on the only Supreme Court decision which could be characterized as upholding a power of Congress to divest the Court of jurisdiction over a class of constitutional cases: *Ex parte McCardle*, 74 U.S. (7 Wall.) 506 (1869). At issue in that case was the constitutionality of an 1868 statute repealing a provision enacted the previous year which had authorized appeals to the Supreme Court from denials of habeas corpus relief by a circuit court. In a brief opinion which did not discuss the scope or implications of the Exceptions Clause, the Court upheld Congress' withdrawal in 1868 of jurisdiction under the 1867 law, stating that "the power to make exceptions to the appellate jurisdiction of this court is given by express words." *Id.* at 514. Despite this broad language, the Court suggested that the withdrawal of jurisdiction provided by the 1867 law did not deprive the Court of jurisdiction over habeas corpus cases that had been conferred by § 14 of the Judiciary Act of 1789. "Counsel seem to have supposed, if effect be given to the repealing act in question, that the whole appellate power of the court, in cases of habeas corpus, is denied. But this is an error." *Id.* at 515.

The Court's *dictum* regarding alternative procedures for Supreme Court review of habeas corpus cases was converted into a holding several months later in *Ex parte Yerger*, 75 U.S. (8 Wall.) 85 (1869). The petitioner in that case had invoked the Court's jurisdiction under the Judiciary Act of 1789. In holding that it had jurisdiction, the Court in *Yerger* made it clear that the 1868 legislation considered in *McCardle* was limited to appeals taken under the 1867 act and upheld the petitioner's right to Supreme Court review under the proper jurisdictional statute. The Court noted that the 1868 act did "not purport to touch the appellate jurisdiction conferred by the Constitution . . . ." *Id.* at 105. In doing so, the Court observed that any total restriction on the power to hear habeas corpus cases would "seriously hinder the establishment of that uniformity in deciding upon questions of personal rights which can only be attained through appellate jurisdiction . . . ." *Id.* at 103. Thus, within months of the *McCardle* decision, the Court made it clear that *McCardle* did not decide the question of Congress' power to deprive it of all authority to hear constitutional claims in habeas corpus cases. For this reason, while the *Yerger* Court acknowledged that the Court's jurisdiction as given by the Constitution "is subject to exception and regulation by Congress," id. at 102, neither McCardle, nor Yerger, nor any other case, constitutes an authoritative statement that Congress could deprive the Court of its core functions.

IV.

Finally, the historical record regarding the authority actually asserted by Congress to control the Court's appellate jurisdiction supports, on balance, the construction that the Exceptions Clause does not authorize Congress to interfere with the Court's core functions. It is indeed true that Congress did not, in the First Judiciary Act explicitly authorize the Supreme Court to exercise the full range of appellate jurisdiction established by Article III. Perhaps the most prominent category of cases in which the Court was not granted statutory jurisdiction were federal criminal cases, which were not explicitly brought within the Court's appellate jurisdiction until 1889. Although Supreme Court review over these cases may have been available in special circumstances, it is probably true that most federal criminal cases were not reviewable by the Supreme Court during this period under the terms of the applicable legislation. The Judiciary Act also failed to grant the Supreme Court appellate jurisdiction over state court decisions striking down state laws as being inconsistent with the federal Constitution, or upholding federal statutes against constitutional attack.

The failure of Congress in the First Judiciary Act to provide the Court with the full appellate jurisdiction authorized under Article III does not undermine the conclusion that Congress cannot interfere with the Supreme Court's core functions, for several reasons. First, while Congress did omit certain specific categories of cases from the appellate jurisdiction provisions of the First Judiciary Act, it is noteworthy that the first Congress, containing among its members many delegates to the Constitutional Convention, recognized the Court's appellate jurisdiction over an extremely broad range of constitutional cases. Most significantly, the Court was given authority under § 25 of the Judiciary Act to review decisions of state courts striking down federal statutes or upholding state statutes against constitutional attack. That authority was conferred despite the intense controversy which it sparked among the states -- controversy which resulted in state resistance to Supreme Court judgments and in attempts in Congress, foreshadowing the current attempts to limit the Court's jurisdiction, to repeal § 25 of the Judiciary Act. The fact that the Judiciary Act did not explicitly recognize jurisdiction over state court decisions upholding the validity of federal laws or striking down state laws, or over federal criminal cases, does not undercut the position that the Court cannot be divested of its ability to fulfill its essential responsibility under the Constitution. The supremacy of federal law, guaranteed by the Supreme Court, would not be seriously threatened by state court decisions upholding federal laws or striking down state laws on federal constitutional grounds.

Second, the history of Supreme Court appellate review has confirmed the importance of its core functions. To the extent that any inferences can be drawn from the failure of the First Judiciary Act explicitly to recognize the full range of the Supreme Court's appellate jurisdiction over constitutional cases, those inferences are subject to refutation by later events. The Supreme Court now has appellate jurisdiction over all federal cases. Each of the areas of incomplete jurisdiction has long since been fulfilled. The vast majority of constitutional decisions which are on the books today, and which affect our national life in many and important ways, have been rendered by the Court under a statutory regime which included such broad appellate jurisdiction. As Justice Frankfurter said in another context, "the content of the three authorities of government is not to be derived from an abstract analysis . . . . It is an inadmissibly narrow conception of American constitutional law to confine it to the words of the Constitution and to disregard the gloss which life has written upon them." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610 (1952) (*concurring opinion*). The gloss which life has written on the Supreme Court's jurisdiction is one which protects the essential role of the Court in the constitutional plan.

V.

As noted at the outset, Congress has substantial authority over the jurisdiction and power of the inferior federal courts. It also is given the power under Article III to regulate the Supreme Court's appellate jurisdiction in circumstances which do not threaten the core functions of the Court as an independent branch in our system of separation of powers. Congress may, for example, specify procedures for obtaining Supreme Court review and impose other restraints on the Court. But the question of the limits of Congress' authority under the Exceptions Clause is an extraordinarily difficult one. Thoughtful and respected authorities have come to conclusions which differ.

The legislative process itself is often important in assessing not only the meaning but also the constitutionality of Congressional enactments. The Court has stated that it must have "due regard to the fact that this Court is not exercising a primary judgment but is sitting in judgment upon those who also have taken the oath to observe the Constitution and who have the responsibility for carrying on government." *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981).

If Congress considers the subject matter of S. 1742 it may wish to do so in light of the principles enunciated above and carefully weigh whether whatever action is taken would intrude upon the essential functions of the Supreme Court as an independent branch of government in our system of separation of powers. As the Court has stated, "The customary deference accorded the judgments of Congress is certainly appropriate when . . . . Congress specifically considered the question of the Act's constitutionality." *Id*. at 64.

Ultimately, it is for Congress to determine what laws to enact and for the Executive Branch to "take care that the Laws be faithfully executed." It is settled practice that the Department of Justice must and will defend Acts of Congress except in the rare case when the statute either infringes on the constitutional power of the Executive or when prior precedent overwhelmingly indicates that the statute is invalid. Accordingly, should the Department be called upon to defend the constitutionality of this bill before the courts, it responsibly could and would do so.

It is appropriate to note, however, that even if it were concluded that legislation in this area could be enacted consistent with the Constitution, the Department would have concerns as a policy matter about the withdrawal of a class of cases from the appellate jurisdiction of the Supreme Court. History counsels against depriving that Court of its general appellate jurisdiction over federal questions. Proposals of this kind have been advanced periodically, but have not been adopted since the Civil War. There are sound reasons that explain why Congress has exercised restraint in this area and not tested the limits of constitutional authority under the Exceptions Clause.

The integrity of our system of federal law depends upon a single court of last resort having a final say on the resolution of federal questions. The ultimate result of depriving the Supreme Court of jurisdiction over a class of cases would be that federal law would vary in its impact among the inferior courts. State courts could reach disparate conclusions on identical questions of federal law, and the Supreme Court would not be able to resolve the inevitable conflicts. There would also exist no guarantee through Supreme Court review that state courts accord appropriate supremacy to federal law when it conflicts with state enactments.

Sincerely,

William French Smith

William French Smith
Attorney General

CONTACT WITH MS. RITA LAVELLE AND THE ENVIRONMENTAL PROTECTION AGENCY

Senator **BAUCUS**. Mr. Meese, I would like to ask you about another area. The point here is to allow you to state publicly and for the record your viewpoint with respect to certain incidents and certain alleged transactions, which all revolve around the hiring of Rita Lavelle at the EPA, the degree to which you corresponded with her or communicated with her on the telephone regarding her activities at EPA.

According to an April 12, 1982, memorandum from Rita Lavelle to Jim Jenkins at the White House, Rita Lavelle requested your presence at her swearing in ceremony on April 19, 1982, to become Assistant Administrator for Solid Waste and Emergency Response.

Did you attend her swearing in?

Mr. **MEESE**. Yes, sir; I did.

Senator **BAUCUS**. Could you tell this committee what your reason was for attending her swearing in?

Mr. **MEESE**. Well, she invited me, and I had known Ms. Lavelle as one of about 150 people that I worked with in the Governor's office in California. I believe I have attended many of their swearings in.

Senator **BAUCUS**. So you have attended many swearings in with many administration——

Mr. **MEESE**. I can remember at least two or three others that I did, yes.

Senator **BAUCUS**. In an April 26, 1982, letter from Rita Lavelle to you, she thanked you for attending her swearing in. She stated in that letter: "Please be assured we will continue to work hard to support the President and that I will always do my best to remain a tribute to 'Meese training'."

Could you tell this committee what "Meese training" is? [Laughter.]

Mr. **MEESE**. I suspect that what she was referring to was the training that all the members of the Governor's office underwent. I think that was probably an exaggerated tribute, perhaps, but I think we did have a basic style of management, communication, and espirt de corps in the Governor's office that I like to think was of the highest quality. And I think everyone in the organization felt that way.

Senator **BAUCUS**. Did she work for you when you were working for then Governor Reagan?

Mr. **MEESE**. Not directly; she was working in one of the subdivisions of the Governor's office in the speech preparation and research office.

Senator **BAUCUS**. Did you have direct contact with her? Can you tell us the number of times that you spoke with her directly or indirectly?

Mr. **MEESE**. I do not know. I would probably see her two or three times a week, either in the halls or when she delivered a speech to the office or something like that. I did not have regular contact in the normal course of business.

Senator **BAUCUS**. When you were with the President in this administration, when did you first learn that she was seeking a job with EPA?

Mr. MEESE. I do not have any distinct recollection. I may have heard about it while it was going through the process. If I did not hear about it earlier casually, I certainly would have heard about it when her name came through the staff review committee for appointment.

Senator BAUCUS. Did you do anything to assist her?

Mr. MEESE. Not that I recollect, no, sir.

Senator BAUCUS. You did not recommend that she be hired or——

Mr. MEESE. No.

Senator BAUCUS. So she was selected through the process but without your involvement in that process?

Mr. MEESE. Yes; other than my involvement as a member of the staff review committee. I do not believe anyone ever asked me about her while she was undergoing the normal investigations and checks.

Senator BAUCUS. I ask because in response to questions by Senator Hart at the February 23, 1983, oversight hearings by the Environment and Public Works Committee, she stated that from the time her name was submitted in nomination for the EPA position to the time she was dismissed, she had direct personal contact with you or someone else in the White House 10 to 12 times. So you are saying——

Mr. MEESE. I believe that was after she was appointed.

Senator BAUCUS. That is correct, after she was appointed.

Mr. MEESE. And I believe she goes on to say either with me or Mr. Fuller or others.

Senator BAUCUS. Yes; so after she was appointed, how many times did you personally——

Mr. MEESE. I can only remember four times. Once was the swearing in ceremony that you referred to. Once was a meeting in my office where she and the Administrator of EPA and several others attended to talk about accelerating the Superfund project and getting additional budget resources, I believe.

A third time was at the EPA headquarters where I attended a meeting, along with others from the White House and OMB, for the midterm planning review, and she was present among all of the other division level heads and the Administrator and Deputy Administrator of EPA. Those are the three times that I can remember personally seeing her. I am sure there may have been other occasions when I would see her at social events and so on around town that members of the Reagan administration participated in, and I had one telephone conversation with her that I recall, which was the morning after she was terminated by the Administrator of EPA.

Senator BAUCUS. What was the nature of that telephone call?

Mr. MEESE. Well, she called and was very distressed, and I told her that the Administrator of the EPA had talked with me and others about it and that we had to support the Administrator of the EPA in taking that action.

Senator BAUCUS. She testified also that she spoke to you, "maybe once or twice on the phone, maybe three times on the phone, and it was more of a status report on a particular site and probably because the Administrator was not there or she sent the inquiry down to me."

Do you recall how many times you talked to her about a particular toxic waste site?

Mr. MEESE. I do not recall ever talking with her about any particular toxic waste site. I suspect she may be confusing me with Craig Fuller in that testimony. But I do not have any recollection of a conversation like that.

Senator BAUCUS. You have no recollection whatsoever of talking to her about waste sites?

Mr. MEESE. No, sir.

Senator BAUCUS. Did you ever inquire of anybody at EPA, including the Administrator or Rita Lavelle, about the status of any toxic waste site?

Mr. MEESE. No, sir; not to my recollection.

Senator BAUCUS. She also testified that you "had somebody place the call" when you wanted to know what was happening with regard to a particular site. She testified that the person making those calls was "most likely Craig Fuller."

Mr. MEESE. I do not know what that means because I never had any interest in any toxic waste site. It is entirely possible for a letter of inquiry to come into my office and, in the normal administrative handling and without my knowledge, be referred down to Craig Fuller's office for a reply. I get anywhere between 300 and 1,000 letters a week, and that is the normal process.

Senator BAUCUS. Do you recall ever talking to Craig Fuller about a site?

Mr. MEESE. No, sir.

Senator BAUCUS. Have you ever asked anyone to place a call to her or to anybody at EPA with regard to a particular site?

Mr. MEESE. Not that I can recall.

Senator BAUCUS. OK. According to former Administrator Ann Burford's appointment book and Rita Lavelle's appointment book you met with Ms. Burford and Ms. Lavelle on September 21, 1982. What was the purpose of that meeting?

Mr. MEESE. I cannot be sure. I would imagine it would either be that meeting that was held in my office when we were talking about accelerating the Superfund Program, a meeting held at their request, or it could have been—and if it just mentioned the two of them, that would probably be that meeting. It would either be that or the other meeting that I mentioned, which I doubt would be depicted in her book that way.

Senator BAUCUS. Was there a discussion of the Stringfellow site?

Mr. MEESE. Not to the best of my knowledge. I do not think any sites were mentioned. I think they were talking generally about speeding up the entire program, although they may have mentioned a particular site as something that they wanted to move on quickly or something. But I do not recall any particular site.

Senator BAUCUS. Ms. Lavelle has been quoted as——

Senator MATHIAS [presiding]. The time of the Senator from Montana has expired.

Senator BAUCUS. Thank you, Mr. Chairman.

Senator MATHIAS. The Senator from Alabama.

Senator HEFLIN. Mr. Meese——

Senator **Mathias**. Would the Senator from Alabama suspend. I see the Senator from Ohio has reentered the room. Does he wish to submit for the record the documents that he had——

Senator **Metzenbaum**. Indeed I do. And I offer them at this point into the record.

Senator **Mathias**. Without objection, they will be made part of the record.

[Material referred to discussed on pages 181–183.]

CONSTITUTIONAL CONVENTION

Senator **Baucus**. Will the Senator from Alabama yield just for one quick question?

Senator **Heflin**. Yes.

Senator **Baucus**. I thank the Senator from Alabama.

Mr. Meese, as you know, there is an effort to call a constitutional convention. There are two States allegedly left to call a constitutional convention for a balanced budget amendment. Do you think it is a good idea for there to be a constitutional convention?

Mr. **Meese**. Senator, that is one of the ways, obviously, that has been prescribed in the Constitution for amendment. I think it is less preferable than a constitutional amendment being generated by the Congress itself.

Senator **Baucus**. So you are inclined to disfavor—to not favor the call for a constitutional convention.

Mr. **Meese**. Well, I think it depends really upon the particular issue. For example, the one historical incident that we have was when the Congress did not see fit to act upon a particular measure and there was a call then for a constitutional convention, it was a measure that was very popular apparently in the country; there was a call for a constitutional convention, and then ultimately the Congress did act, thereby making the constitutional convention unnecessary. I think that is preferable to a convention simply because we have no precedent, no ground rules, and we do not know what would happen.

Senator **Heflin**. Mr. Meese, you have been questioned extensively on different areas of Government. I think there is one area in which we are faced with a growing problem and that is the area of litigation and case backlogs in our courts. The position of Attorney General is important concerning the structure of courts and reforms that take place in the judicial system.

Do you have concerns about the growing backlogs and congestion in our courts? If so, what are your thoughts on what can be done to remedy some of the problems?

Mr. **Meese**. Senator, I do have concerns about what has been described as the litigation explosion, which in turn has caused backlogs in most of our courts. I think there are a number of things that can be done. One of them is more expeditious handling of some cases. Another is to try to develop nonjudicial tribunals where cases can be handled through mediation and arbitration, perhaps. In some of the minor cases this has been tried successfully in some States.

I think one of the things that we can do to have less litigation is to have fewer laws.

Senator HEFLIN. The U.S. Supreme Court load continues to rise each year. I believe the number of cases filed with the Supreme Court last year increased 14 to 15 percent over the cases that had been filed in the previous year. Consequently, there has been a corresponding increase relative to the U.S. Supreme Court's load.

The U.S. Supreme Court now takes jurisdiction of perhaps 5 percent of the cases that are filed with it.

There are numerous conflicts that exist in the various circuits. Is this an area you would focus your attention and perhaps provide leadership in trying to review that problem and possibly suggesting some form of remedy?

Mr. MEESE. Senator, if confirmed, this would be one of the areas that I would want to give attention to and to cooperate with the Congress, particularly with this committee, which I know has done a great deal of research into the matter, as well as with the judiciary itself. I think that is one of the proper functions of an Attorney General.

Senator HEFLIN. Congress recently passed a bill known as posse comitatus, which in effect gave the authority to drug enforcement agencies to have the cooperation of various military services in connection with radar and various planes and sophisticated surveillance equipment in trying to stop the drugs coming into this country.

Many feel that it is a forward step. Congress then passed the crime package, which included the drug czar which the President vetoed because he felt that the Attorney General, in effect, should coordinate the activities of the various agencies and departments of Government concerning drug entries into this country.

I believe it is a crucial problem today. Currently, some of the other committees of Congress have been questioning the Department of Defense in regard to using some of their armed services facilities in this area.

What is your position? Will you endeavor to coordinate the agencies of Government and do what in effect a drug czar would have done under the package which was submitted to the President?

Mr. MEESE. Senator, it would be my purpose to assist in the coordination. Under this administration we have had a very good system whereby the Vice President has been assigned by the President to that coordination task, and I would certainly want to cooperate and work with him to effect that.

Senator HEFLIN. Mr. Meese, I have reviewed your filing of your ethics in Government statement. I see you have reported in effect that you have three investments that fall into the evaluation of $15,000 to $50,000, listed with Keystone Custodian Funds, White House Federal Credit Union, and the National Permanent Federal Savings & Loan Union.

It appears you have investments that fall into the category of $5,000 to $15,000 with AT&T common stock and Exxon common stock.

You also maintain a life insurance policy which has a value falling in the $15,000 to $50,000 category. The remaining funds are pension entitlements from three different groups.

First I want to question your investments. I assume that since coming to the White House you did make an investment in the White House Federal Credit Union.

Mr. MEESE. Yes, sir; that is a savings account.

Senator HEFLIN. That is a savings account. Since coming to the White House, have you made any investments other than interest accounts?

Mr. MEESE. I believe that we made two investments, one in a company, Biotech, which we subsequently sold, and I think there was one other small investment in a similar company, both of which were purchased and sold during this 3-year period.

I do not think either one—I think one was approximately $15,000 total and the other was something less than that.

Senator HEFLIN. In other words, since coming to the White House you have made no other investments. Is the National Permanent Federal Savings & Loan, a Washington based or is that a California?

Mr. MEESE. It is a Washington based firm, and that also is a savings account or a certificate of deposit.

Senator HEFLIN. Have you made any other investments in any category in the neighborhood of $5,000 and above since you have come to the White House, other than savings accounts.

Mr. MEESE. Other than the ones that I just mentioned, which were a purchase and sale during that time.

Senator HEFLIN. I noticed from your ethics in Government statement that you have said you will divest yourself of both the AT&T and Exxon stock if you are confirmed. Your wife divest herself of the the Exxon stock, as well.

Mr. MEESE. Yes, sir; that is correct.

Senator HEFLIN. I believe there is some litigation involving a pension fund which the Department of Justice is involved. You have agreed to recuse yourself relative to any participation in that litigation?

Mr. MEESE. That is correct; sir.

Senator HEFLIN. Do you have any idea, at this time as to your net worth? You may answer this if you wish.

Mr. MEESE. No, sir, I do not. I am sure I could figure it out given time and we have obviously submitted financial statements to various banks and other financial institutions, but I do not know at the present time.

Senator HEFLIN. I believe that is all.

The CHAIRMAN. Without objection, we will place in the record a letter from Mr. Meese to the Office of Government Ethics.

The CHAIRMAN. Mr. Meese, you said you filed your intention to sell stocks.

Mr. MEESE. Yes, Senator, if you are referring to the letter to the Honorable David Martin, Director of the Office of Government Ethics, dated the 29th of February 1984 that does set forth in some detail my intention, if confirmed, to divest myself of certain holdings that might possibly be the subject of departmental activity, my agreement to recuse myself in the specific legislation referred to by Senator Heflin, and to recuse myself from anything else that the Department of Justice ethics officials recommend would not be appropriate for me to take part in.

The Chairman. I believe that this letter explains itself, dated February 29, that you wrote to the Honorable David H. Martin, Director, Office of Government Ethics. And Mr. Martin replied on February 24 in a letter that reads this way:

> In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Edwin Meese, III, who has been nominated by President Reagan for the position of Attorney General, Department of Justice.
>
> We received the report and have also obtained advice from the Department of Justice concerning any possible conflicts in either the Department's functions and the nominee's proposed duties.
>
> There is a letter of February 23, 1984 from Kevin D. Rooney, assistant attorney general for administration, Department of Justice that has been incorporated into and by reference made a part of the financial disclosure report.
>
> Based thereon, we believe that Mr. Meese is in compliance with applicable laws and regulations governing conflicts of interest.

So we will put that in the record at this point, too.

[Material referred to follows:]

Rec'd
1 pm
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THE WHITE HOUSE
WASHINGTON

February 29, 1984

Dear Mr. Martin:

This is to advise you of the steps I intend to take upon confirmation as Attorney General of the United States with respect to my financial interests and those of my wife or my dependent child, as reported on my financial disclosure report (SF 278), which has been reviewed and certified by the Department of Justice and your office, as well as recusal from participation in particular matters as Attorney General.

Upon the advice of the Designated Agency Ethics Official of the Department of Justice, it is my intention to sell my stockholdings in AT&T upon my confirmation or as soon thereafter as is practicable. In addition, my wife has agreed to sell her holdings in AT&T, Exxon and Texaco, Inc., as well as her AT&T bond, upon my confirmation or as soon thereafter as is practicable.

Pursuant to 18 U.S.C. § 208, I will either recuse myself from participation or seek a waiver under § 208(b) in any matter in which I have a financial interest within the meaning of § 208, including any matter involving my interest in pensions from the University of San Diego TIAA/CREF, the Alameda County retirement plan, or the State of California Public Employees Retirement System. More specifically, I intend to recuse myself from litigation currently pending in the Department involving the TIAA/CREF Pension Fund.

Finally, I will recuse myself from participation in any matter in which, in my judgment, it is desirable for me not to personally or substantially participate in order to avoid a possible appearance of impropriety (even if there is a lack of an actual conflict of interest). Such a policy, to which I am committed, will avoid any actual or apparent conflict of interest between my duties as Attorney General and my personal financial interests while, at the same time, enabling me fully to participate in policy decisions as Attorney General.

I intend to notify the Department's Designated Agency Ethics Official, my immediate staff, and the heads of Departments, Offices, Boards, Bureaus and Divisions of this recusal policy and to direct my staff to advise me when any particular matter arises in which it may be necessary or desirable for me to recuse myself or seek an appropriate waiver in order to avoid an actual or apparent conflict of interest.

Sincerely,

Edwin Meese, III

Edwin Meese III
Counsellor to the President

The Honorable David H. Martin
Director, Office of Government Ethics
Office of Personnel Management
1717 H Street, N.W.
Washington, D.C. 20415

cc: Kevin Rooney
Assistant Attorney General for Administration
U.S. Department of Justice

U.S. Department of Justice

Washington, D.C. 20530

FEB 23 1984

David H. Martin, Esq.
Director, Office of Government Ethics
Suite 436
1717 H Street, N.W.
Washington, D.C. 20540

Dear Mr. Martin:

In accordance with Title II of the Ethics in Government Act of 1978, I am pleased to forward the Financial Disclosure Statement of Edwin Meese III, who has been nominated by President Reagan for the position of Attorney General of the United States. After a thorough review of the enclosed Statement, I am satisfied that the Statement presents no conflicts of interest under applicable laws and regulations.

The following matters were discussed and resolved with Mr. Meese:

1. The Statement shows that Mr. Meese owns stock in the American Telephone and Telegraph Company (AT&T). Since the Department is currently involved in a number of matters involving AT&T, we recommended that Mr. Meese divest himself of his AT&T stock, and he has agreed to do so;

2. Mr. Meese's wife owns stock in Texaco, Inc. and Exxon, Inc., both of which are involved in major litigation against the Department. Therefore, we recommended that Mrs. Meese sell those stocks, and she has agreed to do so.

3. The Statement shows that Mr. Meese has a vested right in a pension with TIAA/CREF Pension Fund, as a result of previous employment with the University of San Diego. The Department is involved in litigation which involves TIAA/CREF, and Mr. Meese has agreed to recuse himself from participation in that litigation.

In addition to the above, Mr. Meese has agreed to disseminate to the components of the Department a list of his and his wife's financial interests and a statement of his policy on recusing himself from participation in matters involving those interests.

In view of the above described actions by Mr. Meese, I believe that you can confidently certify Mr. Meese's Statement to the Senate Judiciary Committee.

Sincerely,

Kevin D. Rooney

Kevin D. Rooney
Assistant Attorney General
  for Administration

Enclosure

The CHAIRMAN. All right. The distinguished Senator from Pennsylvania.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Meese, I would like to resume on some of the questions which I had started before, returning to the area of the juvenile issue. And I have a special concern here because of my responsibility as chairman of the Juvenile Justice Subcommittee.

There are in detention in adult jails at the present time on an annual basis some 479,000 juveniles. And they come into two broad categories. One category involves the so-called status offender, which is a misnomer because the juveniles have not committed any offense at all. They may be runaways. They may be neglected children. They have no place to go.

They come into the hands of the police because there is no one else to look after them and they end up in jails and we have had hearings showing that teenagers, young women and young men, have been sexually abused under such circumstances. We have a further problem of a mixing of juveniles charged with offenses with adult offenders, where it is really just a school for crime. I have introduced legislation, Senate bills 519, 520, and 521, to compel the States to deal with the juvenile problem to separate out juveniles from adult offenders, and also to prohibit placing runaways or neglected children in jails, and I would be interested in your thinking on that subject.

Mr. MEESE. Senator, I certainly agree with you as to the desirability of not having juveniles, as a general matter, confined in the same custodial facilities as adults, particularly in the case of the so-called status offenders. In California, the State from which I come, that is now prevented by State law, and separate facilities are required.

Obviously, I am sure that in your statement of those charged with a crime, you are not referring to people who might be technically, but who are being tried as adults, Senator.

Senator SPECTER. No; I do not. I exclude that category and exclude it from the proposed legislation.

Mr. MEESE. I would be interested in reviewing that legislation. I am not familiar with it at the present time, but I would be interested in reviewing it with you.

Senator SPECTER. The difficulty arises as to what the States are compelled to do under the current Juvenile Justice Act. They are given certain funds as an inducement. And my sense is that we have to go beyond, because those inducements have not worked, and if we do not in the legislative context, we have already had one Federal court declare those practices to be violative of due process of law.

Mr Meese, I would like to pursue the question of the Cabinet Council and its functioning, and the policies that you would utilize as Attorney General, if confirmed.

In the *AT&T* case, there were matters submitted tc the Cabinet Council in a context where my judgment was that it was really up to the Department of Justice to make the decision as to what the disposition of that case would be. We have had a lot of concern about *AT&T;* it is proliferated in a lot of directions. But I would like your views as to the exclusive role of the Attorney General, which is really set forth in some detail in statute, as precluding the Cabinet Council from interfering with that traditional role of the Attorney General and the Department of Justice in deciding what happens on that Federal litigation.

Mr. **Meese**. Senator, the Cabinet Council, or the Cabinet itself, does not interfere with the traditional role of the Attorney General. It is the responsibility of the Attorney General and the Department of Justice to conduct litigation on behalf of the United States.

On the other hand, there are some matters with policy issues that relate to a whole group of cases, or with policy considerations that have to be taken into account because of, for example, national security considerations, and so on.

The purpose of the Cabinet and the Cabinet Council is to review those other policy considerations, so that they may be taken into account by an Attorney General when he is making a decision on a particular piece of litigation.

Senator **Specter**. But the ultimate decision you would retain if confirmed as Attorney General, to decide what cases are concluded, what cases are settled, and on what basis?

Mr. **Meese**. Yes, sir.

Senator **Specter**. Mr Meese, I would like to discuss with you for a few moments the oversight function of the Congress and of the Senate Judiciary Committee, as it relates to cooperation between the Department of Justice and the Congress.

I would like first to take up the issue of the 1983 crime package, which was a seven-part bill, and a very significant legislative package, in my judgment, which was vetoed by the President because of the concern about the drug czar bill. You were present at the meeting back in early January 1983 and made a very constructive suggestion about the working out of an accommodation similar to the Director of Central Intelligence, and there were very protracted discussions among Members of the Congress—Senator Thurmond was involved in them, I was, Senator Biden was, and others—and in the ultimate analysis, the Department of Justice was adamant about refusing to compromise, and really, refusing to have the discussions, notwithstanding Secretary of Defense Weinberger's personal agreement, the Central Intelligence Agency and Mr. Casey's personal agreement, the Department of Treasury, with John Walker, the counsel. So that ultimately, that crime package fell by way of veto, and here recently, the Senate passed the drug czar bill, which was accommodated to, and the details were worked out relatively easily. Part of the package was the career criminal bill, which I want to talk to you about in a minute; part of the package was the Justice Assistance Act. And they were very important legislative proposals which, in my judgment would have been very useful during the intervening 14 months in the fight against violent crime.

I would like your comments on what your attitude would be as Attorney General in working with the Congress on such matters.

Mr. **Meese**. Senator, if confirmed, I would want to work very closely with the Congress. Indeed, in the course of the past few months on the so-called drug czar bill that you talked about, I think that the Department has engaged in discussions, and I think accommodations are being reached.

Senator SPECTER. Well, I think they have been. It was inexplicable to me why we could not have done that in January 1983, given the analogy of the Director of Central Intelligence, which was your specific proposal at that meeting.

But I would be hopeful that with you as Attorney General, assuming confirmation, that we could have a more broad-based process of accommodation to try to work out these matters. As Senator Thurmond said, nobody can have everything on these matters. But we lost a very good crime package in that context.

Mr. MEESE. If confirmed, I would look forward to that cooperation.

Senator SPECTER. On the subject of the career criminal bill, which the Senate passed last week in a modified version, a subject that we have discussed—and I understand that you cannot make any commitment in advance—there is an extensive memorandum of law prepared by the Congressional Research Service, which says that it would be constitutional to have a career criminal bill where the local prosecuting attorneys had to concur, request, or agree with the Federal prosecution. And it would be my hope, as you said, taking a look at it ab initio, that the matter could be reviewed by the Justice Department, because I believe if the career criminal bill were to be enacted on a broader base where subsequent offenses, after someone has been convicted of two or more robberies or burglaries and a subsequent offense, that it should not necessarily be limited to just an offense which is now a Federal violation, that there could be a very significant impact on the kinds of career criminals which you and I had discussed earlier this morning.

Mr. MEESE. If I am confirmed, I would be glad to take such a look, as I have indicated to you earlier.

Senator SPECTER. Mr. Meese, going into the question of the oversight function generally—and this is a matter that I had discussed with you privately—there was an issue raised with me on a man by the name of Michael O'Rourke—and I use this only for illustrative purposes, and I realize that you cannot be expected to know every case which is pending in the Justice Department or to comment on it specifically, but I raise it illustratively. This is a man who was being held for deportation. His wife is a Pennsylvanian. I had responded to take a look at the case where there were some very serious questions of impropriety in the proceedings before an administrative law judge in the Department of Immigration and Naturalization, where the man was followed in a very curious way, later explained by the Department of Immigration and Naturalization because they were concerned about his leaving work early.

He has told a Congressman, Congressman Robert Borsky, as I put in the Congressional Record, that had he decided the case, he would have ruled in O'Rourke's favor, and that the man took himself off the case. And since May 10, 1983, in a long series of letters, which I have put into the Congressional Record, I have sought to get some answers to some fairly basic questions from the Department of Justice.

Chairman Thurmond has authorized a hearing in the matter, which is the procedure. But I would be interested in your response, really, on a rather specific basis. Would you have a timetable in mind for responding to a request, say, by a Judiciary Committee member, on a matter which is in the area of legislative oversight?

Mr. **Meese**. Senator, without commenting on or knowing the facts of the particular case that you refer to, I think as a matter of cooperation between the Justice Department and this committee, it would be my purpose if confirmed to ensure prompt responses or, if all the facts and information are not available, at least interim replies and subsequent progress reports on a regular basis.

Senator **Specter**. Mr. Meese, I would hope that if confirmed, you would take a look at the timetable and adopt something which would have some reasonable parameter, and I would suggest to you 30 days as a time for telling a member of the committee what the conclusion is, or why there cannot be a conclusion. But there are a whole series of matters which I shall not go into now because of the shortness of time, where inquiries on enforcement of the antitrust laws, inquiries on a number of cases just have not been responded to.

So do you think that a period such as 30 days might be realistic and practical for such responses?

Mr. **Meese**. Again, without having looked into it, it certainly sounds like a reasonable period.

Senator **Specter**. Mr. Meese, I would like to discuss with you for just a moment or two the overall approach on Federal assistance on the problems of violent crime.

We spend something, and necessarily so, in excess of $249.5 billion on national defense. The Chief Justice of the United States has characterized, I think accurately so, the crime problem in the United States as domestic defense. You have reviewed S. 889, which I have submitted to you about a year ago, which proposes to advance very substantial funds for law enforcement in terms of expediting the trial process, dealing with the issue of sentencing, and also with jail facilities. And I know that you cannot commit yourself to any dollar figure, and I realize the problems of the deficit, but I would be interested in your response to the issue of greater Federal involvement in the fight against crime, with the ultimate question of some greater allocation of resources when it can be afforded.

Mr. **Meese**. Senator, I think one of the greatest things that the Federal Government can do in fighting violent crime is to devote as much of its resources as possible to interdicting drug trafficking in this country and to combating drug trafficking of an organized crime or interstate nature. And as you know, the Attorney General's task force on violent crime in 1981 made this same recommendation, and this is something we are endeavoring to do.

As far as specific allocations to State and local governments, as is suggested in the bill that you referred to, this is something that I would be glad to look into if confirmed and to explore with you those possibilities for greater Federal cooperation with State and local authorities. As you point out, I cannot make a commitment at this time as to any specific sums of money. But I would look cooperatively at how we might do a better job of working with other levels of government in addressing the total crime problem.

Senator **Specter**. Mr. Meese, on the question of the bankruptcy issue, where we are very much in abeyance in responding to the

Supreme Court of the United States' decisions, do you have any suggestion as to how to break the impasse on the matter of the article I and article III judges, and what leadership would you anticipate providing from the Department of Justice, if confirmed, on this important issue?

Mr. MEESE. Senator, if confirmed, I would be happy to provide a great deal of leadership from the Department of Justice. I know the Department and the Attorney General himself are much concerned about this at the present time, particularly with the 1st of April deadline facing this Government.

I have already talked with members of the House Judiciary Committee, on both sides of the aisle, about the importance of getting this into a conference committee as quickly as possible, so that there can hopefully be some resolution of the differences between the House and the Senate bills. But I definitely agree with you that this is an important thing that must be acted upon as rapidly as possible.

Senator SPECTER. I know my time has expired, Mr. Chairman. Thank you for the indulgence and the extra few minutes.

Thank you, Mr. Meese.

The CHAIRMAN. We will now begin round three.

The distinguished Senator from Delaware and the ranking member of this committee.

Senator BIDEN. Thank you, Mr. Chairman.

I noticed all the press held up their cards on what happened in rounds one and two. You are doing fine.

I would like to go back to the point about qualified blacks, women, et cetera, and the pool from which to draw. You make, I think, a very strong case that there has to be some relationship between the pool of people from whom you draw and the number of appointments. It seems to me that is an awful strong argument for affirmative action for law schools. It seems to me that is a very powerful argument for financial aid to poor folks, many of whom happen to be black.

So I assume that in your office as Attorney General, with your commitment to want to get more blacks on the bench, that you will work very hard to move the administration toward increasing access to law school for blacks financially and otherwise.

Is that right?

Mr. MEESE. Senator, I certainly believe there should be resources available to assist qualified people to get into law schools when they are not able to afford it themselves, and I think both through a combination of some of the existing governmental programs and an expanded private sector effort, that this is something that can be accomplished. I know in the law school where I was a professor, that was done through loan and scholarship programs and grant programs from both sources.

Senator BIDEN. Let me put it another way. Would you acknowledge that if it were not done—either through Government or privately—that you would continue to have a situation that you, I thought acknowledged, is one that is not a healthy one, where a growing majority of the minority, browns and blacks, are not represented on the bench?

Wouldn't it be a mistake to allow that to happen?

Mr. **Meese**. Senator, it would certainly be a mistake as a society not to provide opportunities for qualified people of whatever race and background, and that would certainly include minority groups and others. And indeed, that is the pattern in law schools today. There are vastly more members of minority groups going to law school today through a variety of programs.

Senator **Biden**. Doesn't that particularly say we should be focusing on minorities and doing whatever we can to find the qualified among them in the colleges and the high schools and encourage them to move into this area and assist in every way we can—psychologically, financially, politically?

Mr. **Meese**. Yes, it does; and I think, as I say, in most law schools, a number of those programs are going forward.

Senator **Biden**. You know, I cannot tell you how much I would think it would do if the President of the United States or you, if and when you are confirmed as Attorney General, would make a speech that did not just say "all qualified people"—which is true; we want all qualified people to have access—but to say that "I, the Attorney General of the United States, have a particular concern that black Americans are underrepresented, and that we have to do all in our power to see to it that they increase their representation in the citadels of power within the judicial system"—and you may not want to use the words, "affirmative action," but—"I am going to do all I can in my power, every way I can, to lend some credence to the prospect that there will be more blacks encouraged to move in and through the colleges."

Are you willing to do that?

Mr. **Meese**. Yes, Senator; I am, and I have no hesitation at all to use the words "affirmative action."

Senator **Biden**. Do you think Congress has gone too far in civil rights legislation?

Do you think the Congress has overstepped its bounds over that decade?

There is sort of a litany which I get in my own State from some members of my own party and the other party, that goes: "Biden, you know, we appreciate that you are concerned about civil rights, but you have just gone too far."

Do you think the Congress has "gone too far" in civil rights legislation?

Mr. **Meese**. No, Senator; in general, I have not come to that conclusion.

Senator **Biden**. Let me shift to another subject, and that is law enforcement.

Part of the President's platform that he ran on was that we are going to have stronger law enforcement, and then the first budget that was sent up here was one that surprised some of us, in that it called for cuts in positions and dollars and a lot of other things. Since then he has done a turnaround by proposing increases for law-enforcement.

My question to you is do you believe that this trend will continue so that we can give law enforcement at least a fighting chance against international drug trafficking and organized crime elements?

Mr. MEESE. Yes, Senator; I do believe the trend will continue to provide adequate resources, within obvious financial constraints, but nevertheless to provide adequate resources for law enforcement.

Senator BIDEN. Is it safe to say that under your leadership of the Justice Department, we will not see budgetary cuts that call for reductions in crime-fighting agencies?

Mr. MEESE. Senator, I cannot give you any definite statements as to what the budgets would be when I do not know all of the facts. But I can assure you that, if confirmed, I will make sure that there are adequate resources there, to the best of my ability, to carry out the law enforcement functions.

Senator BIDEN. With all due respect, Mr. Meese, Attorney General Smith could make that statement, and we could all sit here and say, "Well, we understand, because we know you do not know all the facts." However, you know almost all of the facts already. You know what the budgets are. You know what is in place. You know where it is. As a matter of fact, some of us thought that you were the Attorney General. I am serious. I mean, your answer, with all due respect does not wash.

If anyone in the Government knows, it is you. So far, I think you are doing great. I mean, keep being straight with us. Are there going to be cuts coming from you?

Mr. MEESE. Senator, I do not know of any cuts now, as I sit here. But that does not mean that there are not additional economies that might be found, and I would not want to mislead this committee by saying there might not be, in some areas of the Justice Department, additional economies that are either worthwhile or necessary.

Senator BIDEN. Do you think there are areas in the Justice Department where there is a need for additional expenditures?

Mr. MEESE. I think that is also entirely possible.

Senator BIDEN. Not possible—I mean, you know—really, you do. Come on.

Aren't there places now where you know we need more money?

Mr. MEESE. Senator, I cannot tell you specific places where more money might be needed.

Senator BIDEN. Maybe I can help you.

Mr. MEESE. It is my understanding that within the Justice Department budget there have been probably the greatest percentage increases for law enforcement functions during the past 2 years than have ever been put into the budget in the history of the Department.

Just for example, as was explored recently in response to another question, the largest amount for new prison facilities for the Federal Government, and so on.

Senator BIDEN. You see, you really do know. That is my point. You do know all of these things.

Mr. MEESE. I know some of them.

Senator BIDEN. So where is it going to go? Back on March 29, 1982—and the reason I am pursuing this is because I have here in my hand—a signed memo, signed by you, Mr. Baker, and Mr. Stockman, on March 29, 1982, addressed to the heads of the executive departments of agencies, and the subject matter of the memo was, "Congressional Inquiries About Spending Increases."

Let me read the first paragraph:

> In many instances, representatives of your agencies have been or will be asked by committees of the Congress how the agency might spend funds provided at levels in excess of the President's budget request. In the past, agencies have dealt with such requests in an ad hoc fashion. Because responses to such questions run the risk of having the President's budget misinterpreted, such responses should not be provided.

And my question is will you, as Attorney General, continue the practice of not providing Congress with insight into how you might use additional funds to fight crime and drugs?

Mr. MEESE. Senator, I think that the Cabinet members have a responsibility to discuss with the committees the President's budget. It goes through a long process. It represents accurately the position of the administration. And while, in the abstract, I would have no hesitation, if confirmed, to discuss generally the subject of any portion of the Justice Department's activity, I think it would be unseemly and indeed improper for me to do things that would tend to undermine the President's budget.

Senator BIDEN. Don't you have an obligation to level with us, the U.S. Congress, the Judiciary Committee, to which you are accountable, and which we have an oversight function? Can't you say to us, like in the good old days, when Ford was there and when Nixon was there, when we ask a question:

> How would you spend the additional money:

The answer used to come like this:

> Well, the President's position is, and my position as Attorney General is, we cannot afford to spend more money for total budgetary reasons. But, in direct response to your question, Senator, if in fact we had an additional $220 million for the fight on drugs, the place I would probably use it would be here—A, B, C, D, and E. But I want to emphasize to you, Senator, that we are not asking for that money. We, in fact, do not believe that in overall mix of things we can afford it. But if in fact the Congress forced us to take it, and the President did not veto, that is how I would use it.

They used to be the good old days of candor.

Now, you are the tough guy—and I am not being smart—and you should be tremendously proud of your record in the area of crime and in the area of fighting crime. And you are coming here with the endorsement of all the police agencies, and guys like me who have spent probably 50 percent of the last 11 years in the Senate, working on this single subject, this single aspect of this, are looking to you to be a spokesperson, to be the one who levels with us and says:

> Look, I agree that we cannot take anymore money. The President is right. His budget cannot afford it. We are in deficit. But, Senator, in answer to your question, the answer is yes, we could use the money. But I am not going to accept it; I do not want it, because of other reasons.

But instead, what you guys do is you sit there and say not only is it not the President's proposal, you spend so much time protecting the President—"you," in an editorial sense—you spend so much time protecting the President that we do not get the facts, because what comes forward to us is, "Well, I guess we do not need that money, or in fact, if we had that additional money, it would not help fight crime. It would be a waste of dollars."

So my concern is, based on your law enforcement experience, assuming you had unlimited dollars, where would you put an additional emphasis from a financial standpoint, to fight what we all acknowledge is the most pernicious problem facing us domestically, and that is crime and drugs?

Where would you put it?

Mr. **Meese**. Are you asking me——

Senator **Biden**. Isn't that a fair question? I am asking you.

Mr. **Meese**. At this time, Senator, I do not know. I do not have that information as to where additional dollars are needed.

Senator **Biden**. Well, OK. Gosh, this is getting—I hope at some point, we return to the way it used to be, in terms of how we get answers in this committee. You know, I really find it hard to sit with you, because—quite frankly—the only real qualification for this job, in my view and to be very blunt about it, that puts you above other people who could be picked out, is that you have an exceptional background in law enforcement.

I mean, you are not a legal scholar. You have taught law school, and you have a fine mind, and you are a brilliant guy. But, in terms of your background, you are not a constitutional expert. You are not a guy who is looked to by the rest of the legal community as one of the great minds in the legal community—and I do not mean that to denigrate you in any way.

You are looked to by the police agencies, you are looked to by guys like me, you are looked to by the people who are knowledgeable about the area of crime, as a guy who really knows his stuff. However, you are sitting before us, and telling us that you do not know what more we could do in the area of fighting crime in this country from a budgetary standpoint. I find that extremely difficult to believe.

And if you really mean it, then maybe my inclination to support you here, because I feel so strongly about the crime issue—I think your record on civil rights, and the President's record on civil rights, is a disgrace—I think your record on civil liberties is something that I am going to get into, which is something that reflects a lack of understanding of the Constitution. But the reason I am willing to sit with these guys and say, "Maybe we should vote for this guy," is because we really find we have a guy who is going to fight crime—and you tell me you do not know where you would spend more money; you do not know where you could better impact upon the fight against crime.

Is that what you are telling me?

Mr. **Meese**. Senator, what I am telling you is that, knowing the additional resources that have gone into law enforcement throughout the Federal Government, I cannot give you a detailed account of where additional funds ought to go——

Senator **Biden**. Just give me general—help me out, generally, not detailed.

Mr. **Meese** [continuing]. And I will always be candid and factual with this committee, if I am confirmed, and will give you my assessment, after I myself have all the facts.

Senator **Biden**. Well, how about being candid before you are confirmed?

Mr. **Meese**. I think I am being candid.

Senator **Biden**. Where? Just general sense—last question—where, generally, do you think we could spend more money that would be effectively used? I know my time is up, but may he respond.

Mr. **Meese**. Senator, I honestly cannot tell you, because I do know, with the additional resources we have put into the organized crime and the drug enforcement fields in the last two budgets, to what extent more money may or may not be needed.

Senator **Biden**. You may not need my vote, but I hope you will think that one over for us.

The **Chairman**. As I understand it, Mr. Meese, the position you have taken here is that you are not Attorney General now. You have working as a policy man in the White House, but if you become Attorney General, you will delve into these matters; you will do research. Then, you will be in a position to make a statement as to where you feel more money is needed, if any.

Senator **Biden**. I think the correct answer is "yes."

The **Chairman**. Is that correct?

Mr. **Meese**. Yes, Mr. Chairman. [Laughter.]

Senator **Biden**. That is why I like working with him. He gives you the question and the answer. He helps me the same way lots of times. [Laughter.]

The **Chairman**. I just wanted to clarify that you may not be in a position now, but after you become Attorney General and get all the facts, you would be in a position to make a statement. Is that correct?

Mr. **Meese**. Yes, sir.

The **Chairman**. Senator Dole has missed, I believe, the first two rounds. Senator Hatch was next, but he has agreed to yield to you, so we will now hear from the distinguished Senator from Kansas.

Senator **Hatch**. Would you yield for a moment?

Senator **Dole**. I yield to the Senator.

Senator **Hatch**. I presume that once you get all those facts and you sit down and analyze them, that if additional funds are needed, you will recommend them to both Judiciary Committees in the Congress as well as other appropriate committees?

Mr. **Meese**. Senator, in the first place, if I felt additional funds were necessary, I would recommend them to the President so they could be included in the budget.

Senator **Hatch**. Sure.

Mr. **Meese**. And I would anticipate that they would be included.

Senator **Hatch**. If you find some that need to be included, you would then recommend them?

Mr. **Meese**. I would talk with the committee in terms of what the needs are and what funds might be required in order to meet those needs, but I would not, as has been suggested here, undermine the President's budget.

Senator **Hatch**. I understand that.

Senator **Dole**. Could I just suggest that if you find a way to cut spending, you let us know, too? [Laughter.]

Mr. MEESE. Senator, that was what I replied to Senator Biden's question on that subject. I think that I am not prepared to do that now, but, if confirmed, would also look for places where economies could be achieved.

Senator DOLE. There are a lot of great speeches made around here about how we ought to reduce the deficit, but sometimes performance does not match the rhetoric. So we are looking for ways to reduce spending and we are trying to put together this little deficit reduction package, and if you think of anything today, let me know; we would appreciate it.

Unfortunately, I was not here yesterday when the distinguished ranking minority member honored me by quoting certain statements I had made on the Senate floor during the debate on the nomination of Griffin Bell.

The statements related to the concerns I had about Judge Bell's close relationship with former President Carter, and I believed then and I continue to believe that the commitment of a nominee for Attorney General to exercise independence from the White House and all political influence in carrying out the Department's law enforcement responsibilities is an important and legitimate area of inquiry for Senators to pursue in executing their constitutional responsibility to advise and consent.

However, to the extent someone can interpret the statements which were quoted as meaning that Judge Bell's friendship with President Carter was the sole or predominant basis for my opposition to his confirmation, I think some clarification of the context of those remarks is perhaps in order, and I will just take a couple of minutes to do that.

I stated at the time that I believed Judge Bell to be an honorable man, a man of high character and high integrity. However, in addition to his close ties with President Carter, there were a number of reasons why I decided reluctantly to oppose his confirmation.

And it is the only negative vote I cast, I think, to any Carter nominee and I must say I made a mistake. I apologized to Judge Bell privately later for having voted against his confirmation because I learned as many of us do around here, despite our differences, that generally the President's nominees are men and women of character and high integrity.

So I would want the record to show that even though I voted no, that is one of those votes I would like to have had back.

But, first, there were certain statements he had made implying that he would remove Clarence Kelly as head of the Federal Bureau of Investigation, in contravention to the 1976 Crime Control Act which prescribed fixed 10-year terms; then second were some of the controversial civil rights cases Judge Bell had decided while serving on the fifth circuit.

Also, there was sort of a double standard at that time. President Carter had campaigned on Watergate; that was a big issue—clean as a hound's tooth, and all those things—and it was very successful and very effective, as I recall, having some association with that campaign—not much, but some. [Laughter.]

Senator LEAHY. How much?

Senator DOLE. Well, not quite enough, apparently. [Laughter.]

But since there was that strong emphasis on Watergate and purity in Government, it seemed to me that that was, particularly at that time, an area of concern and legitimate question.

And, of course, the independence issue is once more being raised in the committee's consideration of this nomination, and I do not quarrel with that. However, I assume those who are raising the issue do not believe the mere fact that a nominee for Attorney General has had a personal and political relationship with a President who has nominated him constitutes a sufficient basis for opposing confirmation.

Griffin Bell had been a friend of President Carter's since childhood. They were great friends, and you need friends in politics—all of us.

Senator **Biden**. I have to leave, so you can quote me like I did you when you left.

Senator **Dole**. I just wanted to remind them how you voted on the Bell nomination.

Senator **Biden**. I know. That is what I want you to do.

Senator **Dole**. I am getting to that; do not leave right yet. [Laughter.]

I mean, I will try to summarize here.

In any event, as I recall, the Senators from Delaware, Massachusetts, and Ohio all voted for Griffin Bell. And I was particularly struck then by a quote from Senator Kennedy.

Senator **Biden**. He is going to get you, Ted; I can leave. [Laughter.]

Senator **Kennedy**. You got yours; I am going to get mine.

Senator **Dole**. This is very mild. I think it is a very fine statement; I wish I had thought of it. [Laughter.]

Senator Kennedy very thoughtfully said, and I quote, "At the same time, the President should have some latitude in choosing his Cabinet, in appointing persons he knows he has confidence in and who are committed to carrying out his programs and policies."

Obviously, that is a statement that many people make. I do not suggest we should not question the independence of the nominee; but since I did vote against Judge Bell's confirmation, I thought the record should also indicate that I probably made a mistake.

I thought he was an excellent Attorney General and an outstanding American, as I told him privately a couple of times. I thought it might be helpful to have that clarification.

Thank you. I do not have any questions.

The **Chairman**. You have no questions?

Senator **Dole**. No; I am like other members; I just make speeches. [Laughter.]

The **Chairman**. The distinguished Senator from Massachusetts.

Senator **Kennedy**. Thank you, Mr. Chairman.

Mr. Meese, I would like to return to the issue of the *Bob Jones University* case and your role in the administration's decision to support tax exemptions for segregated schools. As I understand, you had an interview which was printed in the Washington Post on January 17, 1982, which was 9 days after the decision was announced.

And you were quoted as saying that Ed Schmults, the Deputy Attorney General in the Justice Department, had taken the lead in recommending the new position. Then the article quotes you directly, saying, "I have no idea why"—meaning Mr. Schmults—"did that other than the fact that the President had campaigned on it and the Republican platform was clear."

Is that so, Mr. Meese? You were telling the truth at that time?

Mr. **Meese**. Yes, sir; that was my recollection at the time.

Senator **Kennedy**. Now, I do not always agree with Mr. Schmults, but I think all of us on this committee have come to know him and know that he is a first-rate lawyer. Is it not a fact that Ed Schmults tried as hard as he could to hold the line at the Justice Department against the tax breaks for segregated schools?

Mr. **Meese**. Senator, first of all, the purpose of the administration was not provide tax breaks to a segregated school; it was to clarify by judicial decision the authority of the Internal Revenue Service, and I think there is a very important distinction.

As far as what internal discussions may have been held in the Justice Department between Mr. Schmults and others, I have no knowledge of those, and I do not have any knowledge of the assumption behind your question.

Senator **Kennedy**. All right. Well, I will get to it.

Is it not a fact that far from leading the reversal, he was finally overwhelmed and forced to swallow the White House line?

Mr. **Meese**. I have no knowledge of that.

Senator **Kennedy**. Well, is it not a fact that as recently as December 15, 1981, Schmults had written to Congressman Lott saying that the administration would continue to make the same arguments against tax exemptions for segregated schools that had been made for years? Do you know that to be a fact?

Mr. **Meese**. I do not, sir.

Senator **Kennedy**. Well, I will ask that that record be included in the record, Mr. Chairman.

The **Chairman**. Without objection.

[Letter follows:]

U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

DEC 15 1981

Honorable Trent Lott
U. S. House of Representatives
Washington, D. C. 20515

Dear Congressman Lott:

The Attorney General and the Solicitor General have requested me to answer your letters of October 30th concerning the cases of *Goldsboro Christian Schools, Inc.* v. *United States*, No. 81-1, and *Bob Jones University* v. *United States*, No. 81-3, now pending in the Supreme Court. As you have noted, the Solicitor General is disqualified in these cases.

When the status of private schools with reference to Sections 170 and 501(c)(3) of the Internal Revenue Code came into question around 1970, Commissioner of Internal Revenue, Randolph Thrower, after extensive study of the relevant statutory and constitutional provisions, and after review at the highest levels of the Government, announced the position of the Internal Revenue Service thereafter set forth in Revenue Ruling 71-447, 1971-2 Cumulative Bulletin 230. That position has been maintained by each of Commissioner Thrower's successors, including the current incumbent. The view of the Commissioner has been defended in litigation by the Department of Justice under the several Attorneys General then and thereafter in office. It has been approved by two United States Courts of Appeals in three separate lawsuits. The Department has been unable to conclude that abandonment of the legal position in defense of the Commissioner's regulations in *Bob Jones* and *Goldsboro* would be expedient.

We believe that the cases now pending in the Supreme Court will squarely present the substantive issues involved, and we look to the decision of that Court for authoritative answers to the questions presented. We shall of course be happy to keep you informed of any developments in the cases.

Sincerely yours,

Edward C. Schmults

Senator KENNEDY. On December 18, you received a memo on the issue from your assistant Kenneth Cribb. Then, on December 21, Congressman Lott sent his letter with the Reagan log to the Justice Department. And on December 22, the next day, Schmults forwarded a draft legal brief prepared by the Justice staff to Treasury, still defending the IRS policy of denying the exemption.

Clearly, right at this time a change was in the wind, and according to the Washington Post report, in the third week of December Schmults began moving to change that policy. And then during the Christmas holidays, you were briefed by Fred Fielding and Treasury Deputy McNamara, and the result is that two briefs are drafted at Justice, one for the IRS position and the other against the position.

On January 6, the Attorney General holds a 2½-hour meeting at the Justice Department. A decision is made to reverse the policy and the brief is filed in the Supreme Court on January 8.

A fire storm of criticism erupts, and 4 days later the White House tried to protect itself by announcing it will seek legislation to deny the tax exemption. One of the critical steps in the change in Mr. Schmults' position seems to revolve around the memo dated December 18, 1981.

The memo is addressed to you from your assistant, Ken Cribb, informing you that Justice and Treasury were discussing a policy change. We know that on December 15, Schmults had written to Congressman Lott upholding the policy of denying tax exemptions to segregated schools.

On December 18, you received the memo from Ken Cribb, and on December 21 Congressman Lott sends another letter to Justice, this time enclosing Reagan's log. And lo and behold, right about this time, Mr. Schmults decides to change the policy.

Now, I think a legitimate question is, Did Mr. Schmults jump or was Mr. Schmults pushed by the White House?

Mr. MEESE. Is that a question to me?

Senator KENNEDY. Yes.

Mr. MEESE. First of all, let me just correct one characterization. Mr. Cribb was not my assistant at that time. He was a member of the White House Office of Cabinet Affairs and gave me a memorandum, which routinely was done to acquaint me with what was going on in the departments.

Senator KENNEDY. Are you prepared to provide that memo to the committee?

Mr. MEESE. I am sure I can obtain a copy of it, yes, sir.

Senator KENNEDY. OK.

Mr. MEESE. As to your question, to the best of my knowledge all of the——

Senator KENNEDY. I ask, Mr. Chairman, that that memo be available to the committee.

Mr. MEESE. Let me mention one thing. I do not know, and I would have to ask the advice of White House counsel, as to whether that is a privileged internal document of the White House. I should add that caveat.

Senator KENNEDY. Well, the President's log with his handwriting evidently got out of the White House. That is a Presidential document, too, I guess.

Mr. **Meese**. Yes, it is, Senator; but I am not sure that it got out under proper auspices.

Senator **Kennedy**. Well, all we are asking for is the memorandum to you about this situation. Is there any reason you see why we should not have that?

Mr. **Meese**. Not unless there is some legal reason, so I will inquire into that.

Senator **Kennedy**. What is your own sense as a lawyer and as someone whom we are considering as Attorney General, if there would be any problem with that?

Mr. **Meese**. It is an internal memorandum of the White House, and that is why I would have to seek the advice of counsel.

The **Chairman**. Mr. Meese, you can determine whether it is an internal memorandum that is purely available there in the White House or whether it is the type of communication that could be made available to the committee. If there is no objection to making it available to the committee, the Senator would like to have it.

Mr. **Meese**. I will do so, sir.

Senator **Kennedy**. Well, I think it would be extremely helpful to the committee since it appears that on the basis of that memorandum, your own opinion was formed.

Mr. **Meese**. No, sir; no opinion of mine was formed. That was purely informational. I did not have an opinion on the subject, to be quite frank. And in answer to your specific question, I have no knowledge of the White House providing any information as to what Mr. Schmults' position should be.

Senator **Kennedy**. Well, you said in that New York Times, I think, article that you were the one in the White House that was aware of this change in terms of the Big Three, as I understand it. You were the one who had been aware or briefed on it.

I do not know whether that report is accurate or not in the New York Times of January 17. It said, "He was the only adviser among the Big Three aware of the Justice and Treasury Department plan to end the Government's 11-year ban on tax exemptions."

Mr. **Meese**. I do not know whether that is accurate or not. I do not know who else in the White House was informed. Other offices of the White House were more closely involved than I was.

Senator **Kennedy**. Well, what we have just put in the record is where Mr. Schmults as late as December 15, pointed out the view of the Commissioner of IRS that has been defended in litigation by the Department of Justice under several Attorneys General. It has been approved by two U.S. courts of appeal in three separate lawsuits.

And then evidently there is some communication or memorandum overrulling Schmults, and we are just trying to find out, as the one person in the White House—according to at least the New York Times report, as the person in the White House who was aware of this change—what you knew and when you knew it and what influence you had over the very dramatic change in Schmults' position, because it is quite clear from these letters and the time sequence that Mr. Schmults was effectively reversed in a matter of 2 to 3 days on a long-held opinion.

And we would like to find out to what extent you have any knowledge of that. Were you by any chance there when the President initialed that log?

Mr. **Meese**. No, sir; I was not.

Senator **Kennedy**. Do you know when he did initial it?

Mr. **Meese**. No, sir, I do not.

Senator **Kennedy**. Do you ever see the log before it went in to the President?

Mr. **Meese**. Before it went in to the President? No, sir.

Senator **Kennedy**. Or after it came out?

Mr. **Meese**. I may have seen it then. On occasion, his correspondence logs were routinely routed to me, so I may have seen it. I do not know whether I read that particular item or not.

Senator **Kennedy**. Well, you would remember it if you had read it, would you not?

Mr. **Meese**. No.

Senator **Kennedy**. It is a rather dramatic change in civil rights policy.

Mr. **Meese**. No; I received logs with literally dozens of items like that every week, and I would not necessarily remember that.

Senator **Kennedy**. Dozens of items such as the Bob Jones kind of a situation where they are going to provide tax exemptions for the support of segregated schools, reversing a policy that had gone back over 11 or 12 years?

Mr. **Meese**. Once again, Senator, that was not the purpose of the administration action, as I mentioned before. It was an IRS issue, and I am sure that is the way it was probably indicated on the particular letter.

However, as I say, I did receive literally dozens of pages a week of correspondence logs, some of which had entries from the President.

Senator **Kennedy**. Do you remember whose policy you thought you were reversing? Was it the Carter administration's policy, or whose policy did you think you were reversing?

Mr. **Meese**. I did not know anything about—as far as thinking about reversing it, at what point do you mean?

Senator **Kennedy**. When there was going to be a reversal of existing policy with regard to IRS.

Mr. **Meese**. I did not know in December when that policy had been established.

Senator **Kennedy**. Had you thought, in establishing that policy, that the IRS was losing in court, or that their position was not strong?

You saw some legal memoranda that justified or supported your position, and I am just wondering in my own mind what the basis for that would be because I think for millions of Americans, they are going to wonder, as the Attorney General of the United States, whether you are going to comply with the law and look for remedies and means to eliminate discrimination or whether you are going to look to various legal representations that might be made that can slow that process down.

Clearly, when we look at the result of the Supreme Court's decision, the judgment of law on that issue—it is quite clear that whoever was able to persuade you to take that position was not a very good lawyer.

Evidently, you did have some briefings on this one, as I understand, on December 28 from Mr. McNamar.

And then, December 30, Mr. Fielding talks with Mr. Meese and Mr. Meese has no change in position. Do you remember those briefings?

Mr. **Meese**. Yes; I have a recollection of those briefings.

Senator **Kennedy**. Well, what were they telling you?

Mr. **Meese**. They were telling me that Justice and Treasury had determined to take this particular position, that the IRS did not have the authority.

Senator **Kennedy**. That they would lose it in court; that they had a weak position in court? Were they telling you that?

Mr. **Meese**. They were telling me, as I say, that the decision of those departments was that IRS did not have the authority, and that this was the position that the Government would take in court.

Senator **Kennedy**. Well, as I say, it was just about this time that Mr. Schmults was pointing out that the position had been approved by the two courts of appeals in separate lawsuits.

You will make every effort to provide us with that memo, though, as I understand it.

Mr. **Meese**. I will look into it and see if that is appropriate, Senator.

Senator **Kennedy**. Do we have a date for the log of the President? Can we get the dated log, Mr. Meese, that Trent Lott has referred to?

Mr. **Meese**. I beg your pardon. I do not understand your question, Senator.

Senator **Kennedy**. The log that has the President's writing. Do you know the date of that particular log?

Mr. **Meese**. No, sir; I do not.

Senator **Kennedy**. Is there any way, Mr. Chairman, we can get the date for that particular log? The document has already been released and I think it would be useful to the committee to have that in terms of the whole record.

The **Chairman**. Mr. Meese might check and see if that is available and whether that is considered a confidential, privileged internal document.

Senator **Kennedy**. The date would be confidential and privileged?

The **Chairman**. No; I am speaking about the document now.

Senator **Kennedy**. Well, we have got the document.

The **Chairman**. The Senator wants a date, and so if you want to furnish that date?

Mr. **Meese**. I take it the document does not have a date on it. Is that correct?

Senator **Kennedy**. That is correct.

The **Chairman**. Thank you.

The distinguished Senator from Utah.

Mr. **Hatch**. I will be happy to reserve my time, if I could. I will be happy to give more time to the other side.

The **Chairman**. The distinguished Senator from Vermont.

Senator LEAHY. Thank you, Mr. Chairman.

Just to clarify a couple of matters, Mr. Meese. Yesterday, when I spoke of Executive Order—I said 12036; I meant 12356.

Mr. MEESE. Yes, sir.

Senator LEAHY. With my handwriting, I perhaps should have been a doctor rather than a lawyer, when one looks at the handwriting.

I should also note for some people in the press who asked a question—I was once asked about what I thought would be the process of your confirmation, and I said that the U.S. Senate, as presently constituted, would confirm Jack the Ripper for Surgeon General if President Reagan asked them to.

I was not suggesting that you were either Jack the Ripper or that the position was that of Surgeon General. I was just simply stating a political fact, just so that will be clear.

Senator KENNEDY. Wait until Bob Dole gets a hold of that one. [Laughter.]

Senator LEAHY. Well, it is sort of the way things go around here.

Mr. Meese, do you know John Newman, John D. Newman?

Mr. MEESE. I know John Newman, yes.

Senator LEAHY. Would you identify who he is, please?

Mr. MEESE. John Newman is a gentleman who is in the agricultural business in California.

Senator LEAHY. And is he connected with a particular company out there?

Mr. MEESE. I believe he is connected with Sunkist.

Senator LEAHY. Isn't he the president of Sunkist?

Mr. MEESE. He may be. I do not know his exact position with the company.

Senator LEAHY. Mr. Meese, what is your relationship with Mr. Newman? Is he a friend of yours?

Mr. MEESE. Mr. Newman is a friend of mine. I have known him since the time I was in the Governor's office. I met him then.

Senator LEAHY. Did you have any association with him during the 1980 Presidential campaign?

Mr. MEESE. Not that I can recall, no, sir.

Senator LEAHY. Did you have associations with him during any of President Reagan's gubernatorial campaigns?

Mr. MEESE. No, sir.

Senator LEAHY. Have you been associated with him in California partisan political matters?

Mr. MEESE. I believe most of my association with him has been a matter of social friendship. There may have been some political events that I attended where he was present, but not in the normal sense of political relationships, no.

Senator LEAHY. Do you know of any role he played or contribution he made to the 1980 Presidential campaign?

Mr. MEESE. No, sir, I do not.

Senator LEAHY. On August 31, 1982, you received a letter dated August 30 from Mr. Newman, enclosing various memoranda and asking you to "keep up the good work," and I have discussed some of this correspondence with you or your staff previous to this.

The memoranda he enclosed are described by Mr. Newman as "concerning the disruption of California agriculture by some in the present administration."

Would you tell me what that was that he was talking about?

Mr. **Meese**. Well, I have the memorandum in front of me here. As you mentioned, you discussed it with my staff. He was discussing, as I understood it, some of the actions that were being taken by the Republican administration that were alienating the California agricultural community.

Senator **Leahy**. Did he state that as a result of the OMB standard market orders, "There is substantial doubt whether the agriculture block will support Republican candidates on election day"?

Mr. **Meese**. That is one of the things he stated in the memorandum, yes, sir.

Senator **Leahy**. Did you think that that was an appropriate consideration for OMB to have?

Mr. **Meese**. Well, in all honesty, Senator, I do not remember specifically seeing that memorandum at that time. It was handled in my office, and I may have seen it; but I do not have an independent recollection of having seen it at the time.

Senator **Leahy**. Well, having seen it now, do you think that would be an appropriate consideration for OMB to have?

Mr. **Meese**. To consider the political aspects of something?

Senator **Leahy**. Of the OMB standard market orders. Do you think it would be appropriate for them to consider in setting up the market order a substantial doubt whether the agriculture block will support Republican candidates on election day if they issued such a market order?

Mr. **Meese**. I think, put in those terms, it probably would not be a proper consideration, but the fact that a large portion of the California agricultural community was being alienated by an action of the Federal Government would be a proper consideration.

Senator **Leahy**. Do you think that it would be a proper consideration, though, for the OMB, which was, after all, an arm of the White House Administration you serve in, that that should be their consideration?

Mr. **Meese**. As an arm of the White House, I think that some political considerations can be taken into account, but I think that the President himself has said that politics should not be considered in determining policy issues and that they ought to be determined on their merits.

Senator **Leahy**. Well, in that regard, Mr. Newman also stated that it could be expected that Jerry Brown and other Democratic candidates, according to him, would do their best to widen the gap that has developed between the Republican Party and the agriculture community on this issue—that is a paraphrase.

Did that consideration affect the administration's decision on the marketing order issue?

Mr. **Meese**. To the best of my knowledge, it did not.

Senator **Leahy**. Do you think that Mr. Newman's communication was proper or improper?

Mr. **Meese**. Well, I think any citizen can write to government, and I do not see any impropriety in their expressing their own views.

Senator **Leahy**. Well, doesn't this go a little bit beyond this? I mean, wasn't Mr. Newman going directly to the person he felt was a significant member of the administration, making a request that partisan political consideration should be the basis of a major agricultural marketing order?

Mr. **Meese**. Senator, I know of nothing that would be improper as far as him advising someone in the White House of that. I think on the basis of the President's standards, it would be improper if we acted solely on that.

Senator **Leahy**. Did you reply to Mr. Newman?

Mr. **Meese**. I will have to find out here.

I have a reply that I made to him on the 28th of September 1982.

Senator **Leahy**. And in that——

Mr. **Meese**. And I am not sure whether it was to that specific letter, but it appears that it may be.

Senator **Leahy**. That date was what, again?

Mr. **Meese**. The 28th of September 1982.

Senator **Leahy**. And in that letter, did you point out to Mr. Newman that such matters should be decided in other than just political terms?

Mr. **Meese**. I can read you the letter. It really addresses the letter on the merits.

Senator **Leahy**. Go ahead.

Mr. **Meese**. It says:

> Thank you for the material on agricultural marketing orders. There is agreement among the administration officials that the work of the task force on regulatory relief regarding marketing orders has been brought to a successful conclusion with the publication of the guidelines on fruit, vegetable, and specialty crop marketing orders. USDA recommendations on the implementation of marketing orders will be accepted, providing they are consistent with the guidelines. I believe this arrangement is indicative of this administration's good faith effort to maintain marketing orders as a suitable marketing tool for specialty crop producers.
>
> You may be interested to know that since the tart cherry decision, USDA has approved reserves for raisins and almonds.

Senator **Leahy**. Do you have any idea what that is all about?

Mr. **Meese**. No, sir.

Senator **Leahy**. OK. [Laughter.]

One of my other hats is as a member of the Agriculture Committee, and I am trying to figure out what it is all about, too, so do not feel badly on that one.

Well, let me ask you this. Suppose you were now sitting there as Attorney General, about to initiate an antitrust action, or improper waste disposal prosecution—it has worked its way up to your level, and you are going to sign off on it. And you received a letter similar to Mr. Newman's, urging you to refrain from acting based on what block of support would be lost for the Republicans or gained by the Democrats, or what Democratic candidate might be able to make of it—what would you do?

Mr. **Meese**. I can assure you, Senator, that I would decide the matter on the merits of the issue, without any regard to the political consequences.

Senator **Leahy**. What sort of response would you make?

Mr. **Meese**. I think, if confirmed as Attorney General——

Senator **Leahy**. Yes; speaking as Attorney General, now, not as the Counsel to the President.

Mr. Meese [continuing]. Yes—then, I would respond affirmatively that in a decision on these matters the political implications are not a proper subject for consideration by the Department of Justice.

Senator Leahy. Now, Mr. Meese, in September 1981, representatives of Sunkist were involved with ex parte, and some have claimed, illegal contacts, with staff members of the Environmental Protection Agency concerning regulation of the pesticide, EDB.

Do you recall ever having a conversation or correspondence with Mr. Newman, Mr. Jim Lake, who now works for the Reagan reelection committee, but at the time represented Sunkist, or any other representative of Sunkist concerning EDB?

Mr. Meese. I do not have such a recollection, no, sir.

Senator Leahy. Do you have a recollection of anybody on Sunkist's behalf having a conversation with you regarding EDB or approaching you or members of your office or staff regarding EDB?

Mr. Meese. I do not recall anyone approaching me, and I do not recall having any knowledge of anyone approaching anyone on my staff.

Senator Leahy. If you were to find that somebody had approached you or your staff regarding EDB, either from Sunkist or on behalf of Sunkist, would you let me know?

Mr. Meese. Yes, sir, I will.

Senator Leahy. Or if anybody has approached you or your staff regarding EDB, whether on behalf of Sunkist or not?

Mr. Meese. If I learn of such an approach, I will.

Senator Leahy. Is my time up, Mr. Chairman, or do I have time remaining?

The Chairman. You have a few more minutes.

Mr. Short. Approximately 4 more minutes.

Senator Leahy. I am going to be asking you—and if the time runs out, I will go back to it—yesterday, we talked about draft registration. And I should make sure again that you understand my own feelings on this, about the failure to register for the draft.

I was opposed to registration, voted against it in the Appropriations Committee. I lost, and it became the law of the land. An offense against that law was made a felony. I think that is too strong an offense, but it is the law. And I do not support lawbreakers, so I would not object to fair prosecution of draft registration resisters.

But I do not want to see anything in our system which results in selective prosecution, especially if that selection basis implicates the exercise of first amendment rights, a philosophy I had during nearly 9 years as a prosecutor, and it is a policy I carried to the U.S. Senate

Now, if I understand correctly, yesterday, Mr. Meese, you maintained that you did not know what was meant by the policy of passive enforcement of the draft registration laws.

Mr. Meese. Yes, sir; I did not when you raised the question the first time. I thought you were referring to things like the Solomon amendment and that sort of thing.

Senator Leahy. And you understand now that that was a policy where the Government did not actively seek to discover nonregistrants, but rather, prosecuted those identified by a neighbor or others, or who themselves had written and said that they were not going to register. You understand that——

Mr. **Meese**. Yes; I understand that phrase as you use it now.

Senator **Leahy**. Now, do you understand today what the Government—and I do not mean just the Justice Department—but what the Government's policy of prosecution is?

Mr. **Meese**. I do not know specifically in the terms that you state what the policy is at the present time.

Senator **Leahy**. Well, that is where I have a bit of a problem, and I wanted to make sure I fully understood you, because Mr. Lipp of the Justice Department used this term when testifying to the House Committee on the Judiciary on July 28, 1982, on draft prosecution policy.

Now, did you in any way follow what was going on up here on the Hill regarding the testimony about the administration's draft prosecution policy?

Mr. **Meese**. No, sir; I did not.

Senator **Leahy**. Let me make sure I fully understand this. You did not follow that as counselor to the President——

Mr. **Meese**. No, sir.

Senator **Leahy** [continuing]. Or as a member of the Military Manpower Task Force——

Mr. **Meese**. No, sir.

Senator **Leahy** [continuing]. Or as a Selective Service liaison officer?

Senator **Leahy**. So, then, were you also unaware of Assistant Attorney General Jensen's memorandum in June 1982 recognizing that, "The first prosecutions are liable to consist of a large sample of persons who object on religious and moral grounds and persons who publicly refuse to register"?

Mr. **Meese**. I may have been familiar with that memorandum, or at least with the information that is contained therein.

Senator **Leahy**. I will come back to this subject. My time has expired.

The **Chairman**. The distinguished Senator from Nevada.

Senator **Laxalt**. Mr. Chairman, I have the feeling that these hearings are fast getting into the dragging stage, and I think that that feeling is shared by most of my colleagues on this side of the aisle.

Senator **Leahy**. I am sorry, I could not hear the distinguished Senator from Nevada.

Senator **Laxalt**. I was just indicating—it was no particular allusion to the questioning that has just transpired—that the hearings are fast getting into a dragging stage. And, recognizing that, I wonder, Mr. Chairman, if Senator Leahy and the members of the minority have no objection, if we might consider having Senator Metzenbaum perhaps do his questioning in a block. He has indicated to me that he has an hour and a half or 2 hours of questions, and it would seem to me, for the purpose of the record, and also, for the convenience of this witness, that perhaps we handle the Metzenbaum testimony en bloc. After that time, those on this side of the aisle, either in rebuttal or otherwise, may ask the remaining questions.

I would like to submit this proposal to the chairman and to Senator Leahy and the members of the minority for their consideration.

Senator LEAHY. Mr. Chairman, might I be heard?

The CHAIRMAN. Is Senator Biden around, the ranking member?

Senator LEAHY. Mr. Chairman, might I just express my own views on that a bit? I have sat through several hours of hearings, and I have heard some fine speeches on both sides of the aisle, and even some questions on both sides of the aisle.

I think that the questions of Mr. Meese—I certainly would not want him to have to try to bounce back and forth too often, or to be hit with surprise questions. I think that virtually everything I have raised here, I have notified either Mr. Meese or his staff that I was going to raise.

I think if you will go back to the transcript, you will notice that the vast bulk of my time was in very short, precise questions that could be answered either "Yes" or "No" or in short answers. I do have a few more along that line. I would not be spending the time if I did not think these questions were important. I will save my speeches for the floor. But I do not want to lose my opportunity to ask these questions.

Senator LAXALT. Pat, I did not mean to imply that your questions have not been substantive; they certainly have been—but in the interest of continuity, we thought it best here that the Metzenbaum presentation be treated en bloc. We certainly would have no objection if you want to pursue and complete your questioning, when we come back in at two, and then turn it over to Senator Metzenbaum.

Senator LEAHY. Mr Chairman, I have no objection if we work this down to where we have specific times to go into our questioning. If anything, that might make it easier for all of us.

The CHAIRMAN. Well, during the lunch hour, I think that can be negotiated with Senator Biden.

Senator LEAHY. I have no objection.

The CHAIRMAN. Let me ask you, about how much longer do you think you will need, in view of the questions that have been asked? The Senators come and go, and they do not hear the questions that have been previously asked. There has been a lot of duplication here, and I wonder if we cannot arrange to prevent so much duplication. Mr. Meese is very gracious, of course, to go ahead and answer these questions over and over again, but really, there is no need to take so much time if the question has been asked before. If you have asked a question before, and somebody else asks the same question, you are going to get the same answer.

Senator LEAHY. Mr. Chairman, I have followed these proceedings very, very carefully, and none of my questions have been asked by anybody else. There has been no repetition in them.

Senator LAXALT. That is true.

The CHAIRMAN. You are welcome to ask whatever questions you want. I am just suggesting that if we can prevent duplication, we will save the time of everybody.

Now, during the lunch hour, we will talk to Senator Biden and staff, and see if we cannot negotiate along the lines that Senator Laxalt suggested.

Senator HATCH. Mr. Chairman, if you would, I think that would be desirable. We have had three rounds here. I think Senator Laxalt's suggestion is a good one. Let those who are going to take more time pursue their lines of questioning and finish. I presume that is principally Senator Metzenbaum, but certainly any other Senator who has any questions ought to be accorded time. I would like to see this move along with a little more dispatch. We have all had a chance to alternate back and forth, and maybe that is the way to do it. I think Senator Laxalt has hit the nail right on the head.

The CHAIRMAN. All right. During the lunch hour, Senator Biden will be conferred with, and if he agrees to that, we will follow that procedure.

Is there anything else anybody wishes to take up before the recess?

[No response.]

The CHAIRMAN. We will now recess until 2 o'clock.

[Whereupon, at 12:58 p.m., the committee was recessed, to reconvene at 2 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. The hearing will come to order.

The distinguished Senator from Massachusetts.

Senator KENNEDY. Thank you, Mr. Chairman.

Mr. Meese, the issue of equal pay for work of comparable worth certainly is one of the most important civil rights issues. It is an issue of equity and fairness for not just women in this country, but I think for the overwhelming majority of Americans and the wage gap between working men and women is largely due to the lower wages paid for job categories dominated by women.

Do you support the concept of equal pay for work of comparable worth?

Mr. MEESE. Senator, I certainly support the concept of equal pay for equal work, which has long been the policy of this country. As far as the other issue, which is now a matter in a case that I understand has been moving through the court system——

Senator KENNEDY. I know you perhaps do not want to comment on that particular case.

Mr. MEESE. Right.

Senator KENNEDY. That is why I just asked it in a general way.

Mr. MEESE. Also at this point, not having done an analysis of that subject, I would prefer not to comment on the concept as well.

Senator KENNEDY. Well, I would not think it would take a lot of study to comment on a concept of equal pay for comparable work. I would not think that that basic, rather fundamental concept takes a great deal of study.

I can understand where you may not want to comment on a particular case because of various legalities which are raised, but on this rather basic and fundamental issue of equity and fairness, I would be interested in your answer. One of my concerns is whether you, if confirmed as Attorney General, would be someone whom the people in this country would be able to look to as one who is going to be a sense of hope and whether you are going to be standing up for those who for whatever reason have been left out of our society.

And clearly the issue of equal pay for comparable worth is an issue of equity. It is an issue of fairness. And I am just interested in finding out whether you are prepared at this time to say that you favor that proposition and proposal.

Mr. **Meese**. Senator, it is far more complex as a legal issue than a simple fundamental value. That is the reason for the litigation at the present time, and as I have indicated earlier, I am not prepared to give you an answer on that.

Senator **Kennedy**. Excuse me, Mr Meese, I was just talking to staff. Do you want to repeat.

Mr. **Meese**. I would be happy to repeat it.

Senator **Kennedy**. Fine, thank you.

Mr. **Meese**. As I say, this is a very complex legal issue. It is a matter on which the Department of Justice is currently formulating an opinion, and therefore it would not be appropriate for me to give you an answer at this time.

Senator **Kennedy**. But as a matter of your own personal viewpoint, you are going to have a heavy influence in terms of what the outcome is going to be. You are not prepared to either tell us about your own view? The department obviously is going to have a position, but are you prepared to tell us what your own view is?

Mr. **Meese**. Senator, I believe my own view of this complex legal issue should be formulated only after a thorough evaluation of all the aspects, an analysis I have not been able to make, and therefore I am not prepared to give you an answer at this time.

Senator **Kennedy**. Well, is this in spite of the fact that the law under the landmark case, the *Gunther* case, held that it was the law of the land.

Mr. **Meese**. Are you referring now to the case in Seattle, Washington? That is hardly a landmark case, Senator; that is a trial court——

Senator **Kennedy**. Well, it certainly is for a lot of people who are affected by it and who have been discriminated. They consider it to be a landmark.

Mr. **Meese**. Well, it is a trial court case and as yet has not been made part of the appellate docket of the U.S. judicial system.

Senator **Kennedy**. I am talking about *County of Washington* v. *Gunther*. This is the Supreme Court case, is it not? That is in the Supreme Court case, not the *State of Washington* case. What is your understanding of that particular case and that particular holding vis-a-vis the issue of comparable pay for comparable worth.

Mr. **Meese**. Senator, to the best of my knowledge, the Supreme Court has never ruled on the issue of comparable pay for comparable work, so I cannot understand what case you are referring to.

Senator **Kennedy**. Well, we will have a chance to come back to this, but as I again want to say that as far as I am concerned, that your unwillingness to make a basic statement with regard to the issue of equity and fairness in terms of equal pay for comparable worth, I would imagine would make it extremely difficult for women in our society to feel that they are really going to have a friend in the Justice Department, should you be confirmed.

As I understand now, there has been a statement by Mr. Reynolds with regards to the case in the State of Washington, *AFSCME*

v. *the State of Washington.* Can you give us any assurances that you will review at least the Department's position in that case?

Mr. MEESE. Yes, Senator, if confirmed I will review the Department's position on that matter.

Senator KENNEDY. Have you discussed this case at all with the Justice Department?

Mr. MEESE. I have discussed with the Department the fact that there is such a case. I have no idea as to what their ruling is or what their ultimate position will be, and I have not discussed either the facts or the basic legal concepts of it. I was informed that there was such a case as a part of the briefings generally for this hearing.

Senator KENNEDY. Well, who did you talk to about that?

Mr. MEESE. I talked with, I believe, Mr. Reynolds, the head of the Civil Rights Division.

Senator KENNEDY. And when did you talk to him about that case?

Mr. MEESE. I think probably sometime within the last 3 weeks, probably more than a week ago.

Senator KENNEDY. And can you tell us about that conversation?

Mr. MEESE. I believe Mr. Reynolds informed me that there was such a case and that the department was doing a legal analysis of it.

Senator KENNEDY. And what was your response or reaction to that?

Mr. MEESE. I thanked him for giving me the information.

Senator KENNEDY. You expressed no opinion?

Mr. MEESE. No, sir, I do not believe I did at the time.

Senator KENNEDY. Or any other time?

Or any other time?

Mr. MEESE. I do not believe I have expressed an opinion as to what the legal analysis would produce.

Senator KENNEDY. Well, I am not talking about legal analysis. Did you indicate support for the Reynolds' position or did you disapprove?

Mr. MEESE. I do not know what the Reynolds' position is, Senator.

Senator KENNEDY. Well, in his conversation with you he did not tell you what the proposed position was going to be of the Justice Department?

Mr. MEESE. No; the question before the Justice Department, I believe, is whether to intervene or not——

Senator KENNEDY. That is right.

Mr. MEESE. And I believe the Department had not yet reached a position; that is what I was told.

Senator KENNEDY. And you did not indicate to Mr. Reynolds one way or the other your own view on this case in any way?

Mr. MEESE. That is correct.

Senator KENNEDY. At any time?

Mr. MEESE. I do not believe I have, no.

Senator KENNEDY. Well, you would know whether you had, would you not? Have you talked to anyone in the White House about the matter?

Mr. Meese. I believe it has been a matter of discussion in the White House, yes.

Senator Kennedy. Well, can you tell us about those discussions?

Mr. Meese. No; I do not think I can, Senator.

Senator Kennedy. Well, can you tell us who you talked to about it?

Mr. Meese. I cannot remember. This has been a matter of discussion at various staff meetings within the White House, that such a case was coming up and that it was a matter being handled by the Justice Department. I cannot remember all the people that I talked to about it. There were several people at a staff meeting, at which this was routinely brought up.

Senator Kennedy. And during any of these discussions, either with Reynolds or at the White House, you did not express any view or opinion with regards to the issues raised in the case; is that correct?

Mr. Meese. Not as to the issues raised in the case, no, sir.

Senator Kennedy. Well, I do not want to play a word game with you. We are trying to move these hearings along. Did you express any opinion to anyone in the White House at any time about this case, and if so, what view did you express?

Mr. Meese. I believe I probably did agree with someone else's expression that it was a difficult case.

Senator Kennedy. And that is the total sum of it?

Mr. Meese. Yes, sir.

Senator Kennedy. It was a difficult case for who?

Mr. Meese. It is a difficult case from a political standpoint.

Senator Kennedy. Why is that?

Mr. Meese. Because there are many people on both sides of the issue.

Senator Kennedy. Well, and that makes it a difficult case? That was the only opinion? You just said, "This looks like a difficult case because"——

Mr. Meese. No; I said I agreed with someone who did express that opinion.

Senator Kennedy. Well, is it unusual for the Government to interfere on the side of the defendants in a civil rights case?

Mr. Meese. It depends on who is the defendant and who is the plaintiff.

Senator Kennedy. Well, is it not unusual though? Looking back, you must have done a good deal of preparation in terms of these hearings. Is it not unusual for the Justice Department to interfere on the side of the defendant?

The Chairman. If I could just interject something. Just a minute.

Senator Kennedy. All right. I just want to finish.

The Chairman. I know, but just let me say something right here.

Senator Kennedy. Well, if I have the floor——

The Chairman. You have the witness—you have asked a question and I am going to answer part of it myself because the Justice Department interfered in my State in two cases recently and took the side against the county in one case and against the State in the other. In other words, they took the side of the plaintiffs in both cases. And so this is not a one way street. I can tell you that from my own experience in South Carolina. I just wanted to give the Senator that information.

Senator **Kennedy**. I thank the chairman. That was very helpful.

Senator **Mathias**. Those were the two cases the chairman mentioned yesterday when I was——

The **Chairman**. That is right.

I am not too sure Senator Kennedy was here at that time. So I wanted to be sure he understood that.

Senator **Mathias**. I hope those are not the only two cases.

The **Chairman**. Well, those are just two that happened within the last month, two in my own State, which contemplates what he is trying to get out of the witness.

Senator **Kennedy**. The chairman has made my point because in that case they interfered in support of the law, and what we are talking about here——

The **Chairman**. They interfered against the State and they interfered against the county.

Senator **Kennedy**. They interfered in support of the law. In the *AFSCME* v. *Washington* case, Mr. Reynolds' approach would be to interfere on behalf of the defendants.

The **Chairman**. Well, they are interfering——

Senator **Kennedy**. The enforcement of the law——

The **Chairman**. If they interject themselves in a way that you do not like, I guess they are interfering.

Senator **Kennedy**. I think——

The **Chairman**. Excuse me. Go ahead, Senator.

Senator **Kennedy**. You want the record to stand that when this case at least to your attention that the most that you can remember ever expressing a viewpoint on is that it is a difficult political issue because there are people on each side of the issue.

That is the way you want the record to remain and to stand on this issue?

Mr. **Meese**. My discussion of this was, I believe, agreeing with others who indicated it was a difficult political case because there are both merits and people on both sides of the issue, yes, Senator.

Senator **Kennedy**. Well, Mr. Meese, did you ever ask about upholding the law and what the law was on it besides just being a political decision?

Mr. **Meese**. Senator, the only discussion that I was present at was when it was mentioned that this was a difficult issue from a political standpoint and on the merits of the case because there were merits on both sides.

Senator **Kennedy**. And what did you determine about the legal aspects of it? You have told us about the political aspects.

Mr. **Meese**. As I have indicated, I have not had the opportunity to do a legal analysis or look into the legal issues.

Senator **Kennedy**. But as Attorney General you will, if you are confirmed.

Mr. **Meese**. If confirmed, I certainly will.

Senator **Kennedy**. I just have two other areas. I told Senator Metzenbaum I would be brief.

The **Chairman**. I believe your time——

Senator **Kennedy**. I would continue if I could.

On the issue of——

The CHAIRMAN. I believe your time is up, unless we make some arrangements.

Senator KENNEDY. I thought we were going to try to take blocks of time to conclude the hearing.

The CHAIRMAN. You want to finish with your questions?

Senator KENNEDY. Yes; that is what I was interested in.

Senator HATCH. Mr. Chairman, if he only has two more areas——

The CHAIRMAN. Is there any objection to allowing the Senator to proceed?

Senator KENNEDY. I just have two. I will only be a few more minutes.

The CHAIRMAN. Go ahead.

Senator KENNEDY. This is on the issue of legal services, Mr. Meese.

You have expressed opposition to the Legal Services Corporation on a number of occasions. Is that your position today?

Mr. MEESE. Yes; I have expressed opposition to the Legal Services Corporation because I felt it was not the most effective means of providing legal services to the poor.

Senator KENNEDY. But the law is that the Legal Services Corporation has been established and it is the law. Can we expect that you will enforce that law as long as it is the law?

Mr. MEESE. Yes, sir.

Senator KENNEDY. And I imagine we can interpret from your earlier response that you are going to try to alter and change the law on that issue of legal services, or not?

Mr. MEESE. If the administration position continues to be opposed to the Legal Services Corporation, then if confirmed, I would join that position to the extent it became a part of my province in the Justice Department. It does not very much, but I would agree with the position of the administration that there are more effective ways to provide legal services to the poor than through the Legal Services Corporation.

On the other hand, if it is the will of Congress that the Legal Services Corporation continue and the President agrees by signing a bill to that effect, then I would equally firmly uphold the law in that regard.

Senator KENNEDY. So you will certainly enforce the law as it is at the present time, which is that there is a Legal Services Corporation, which does oversee the whole legal service program in this country, and will enforce that unless there is going to be a change by the Congress in that program.

Mr. MEESE. Yes.

Senator KENNEDY. On a different issue, on the pocket veto issue, last November 30 while Congress was in recess between the first and second sessions, President Reagan used the pocket veto against the El Salvador human rights certification bill, and the pocket veto meant that Congress did not even have a chance on whether to override the veto and the President could easily have returned the vetoed bill to Congress in the normal way, but he chose to pocket veto.

I am not now talking about the merits of Salvadoran certification. I am talking about the President's decision to use the pocket veto instead of a normal veto. Did you have anything to do with that decision?

Mr. MEESE. I participated in meetings when it was discussed.

Senator KENNEDY. What can you tell us about that, your own position on this issue?

Mr. MEESE. My position was that based on the legal information I had received from the White House counsel, and I believe the Justice Department was also consulted, the pocket veto was appropriate at that time.

Senator KENNEDY. Have you had a chance to review the legal questions at this time?

Mr. MEESE. No, sir; I did not.

We relied upon the advice of the legal counsel.

Senator KENNEDY. Did he talk about the position of President Ford or Attorney General Levi, both who agreed in 1976 to use the normal veto in such circumstances and that there was not a precedent for this?

Mr. MEESE. I do not recall either of those gentlemen being mentioned in the discussions.

Senator KENNEDY. Well, did you ever ask what the previous holdings were in terms of the legal cases?

Mr. MEESE. No, sir, I did not.

Senator KENNEDY. You did not ask about what the legal precedents were?

Mr. MEESE. No, sir.

Senator KENNEDY. Why not?

Mr. MEESE. Because the discussion was as to what ought to happen. As a matter of fact, at the time of the veto I do not believe that I was party to any legal discussions. After the fact, I may have been. But there was not an awful lot of time spent in legal discussions, other than to being assured by legal counsel that, in their opinion and the opinion of the Justice Department, with whom they conferred, the pocket veto was proper.

There was a greater discussion later on after the lawsuit had been brought on the subject.

Senator KENNEDY. This obviously will be decided, I expect by the Supreme Court. But there have been decisions both in the district court and circuit court on this very issue. And I suppose one of the questions which I come back to repeatedly is whether we are looking at what the law is in terms of enforcement of the law or looking at ways to circumvent the law in order to carry forward some kind of a policy view and a policy decision. And that is something that is a matter of very considerable concern to me.

I thank the Chair. I have no further questions.

The CHAIRMAN. The distinguished Senator from Maryland.

Senator MATHIAS. Let me ask the Chair if the Senator from Ohio is expecting to go next, I do not want to dislocate any of his time.

The CHAIRMAN. I believe Senator DeConcini was to go next, according to you, was it not Senator?

Senator METZENBAUM. The question had been asked of me earlier this morning, whether if I gave up my time at that point, and then they just give me a clear road this afternoon, that that would be all right with me, and I indicated to a couple of members on that side it would be.

I certainly do not want to be here precluding anybody from having their time. And if the Senator from Maryland is going to take 15 minutes or something and the Senator from Arizona is going to take 15 minutes, I will bide my time with the understanding that once I start that I will be able to go all the way through until I conclude. Would that be all right, Mr. Chairman?

The CHAIRMAN. That seems fair enough, if it suits these gentlemen.

Senator METZENBAUM. I do not mean to impose any limits opon you, Mac.

Senator MATHIAS. No; I do not have any extended questions. I have just two or three to clean up from the previous round.

The CHAIRMAN. Well, we will take the Senator from Maryland next and then the Senator from Arizona, if that is agreeable.

Senator DECONCINI. I thank the Senator from Ohio. I might be as long as 30 minutes at the most. I think 15 or 20 will probably be sufficient.

The CHAIRMAN. You think that will finish all your questions?

Senator DECONCINI. Yes, sir; I know it will not take longer than that.

The CHAIRMAN. Senator Mathias, do you think you will finish all your questions?

Senator MATHIAS. I would think very quickly.

The CHAIRMAN. Senator Grassley I do not believe has had a second round.

Senator GRASSLEY. Mr. Chairman, I have consented to submit my questions in writing because I have to leave early this afternoon.

The CHAIRMAN. All right. If you wish to submit them in writing, that would be all right. And Mr. Meese will answer the questions in writing. So that takes care of Senator Grassley.

So, Senator Mathias.

JOINT RESEARCH AND DEVELOPMENT

Senator MATHIAS. Thank you, Mr. Chairman.

Mr. Meese, we were rudely interrupted by the clock on the last round. We were talking about antitrust matters and about the fact that there are issues that cut both ways. On one hand the Attorney General is required to guard the interest of the consuming public. On the other hand the Attorney General has to take some interest in productivity and in protecting the international economic position of the United States.

We face very stiff challenges from Japan and from Europe in high technology, computers, microelectronics, basic research; in all of these areas we are vulnerable.

One way to meet this challenge would be to allow American companies to join forces to do joint research and development. I believe you have had a chance to review the bill that I introduced last summer that would encourage joint ventures by removing some of the risk that a multibillion-dollar antitrust suit would be undertaken if there is cooperation in research and development.

The administration has another proposal with the same goal in mind. We are suffering a hemorrhage of dollars because of the enormous trade deficits that this country is suffering. So every day counts.

If we are going to get anything done this year, I think we have to compromise a little on each side. I wonder if you have any idea whether the administration is prepared to be a little more flexible and to move forward so that we can do something at least for the future to stop this enormous loss of business and jobs and profits?

Mr. **Meese**. Senator, I certainly agree with you as to the necessity of legislation that would provide for research and development joint ventures between companies so we can improve our productivity.

At this point I am not in a position to commit the administration specifically to anything, but I do know, having talked with representatives of the Department of Justice, that it is their view and it certainly would be my view, if confirmed as Attorney General, to cooperate with you and other Members of the Congress to get such legislation moving.

Senator **Mathias**. Well, that would be very welcome because something has to happen. This is one of the limited areas in which we really have an option that we can move on now. And so I hope that you will undertake that very seriously.

PRIVACY AND NEW TECHNOLOGY

Now, in your opening statement you made the comment that electronic funds transfers create new law enforcement problems. I would certainly concur with that. One of the interesting aspects of the work of this committee is to try to keep track of new technologies and how they affect existing laws.

One area which has been controversial is the privacy field. The 1968 Federal wiretap law provides clear standards for issuing warrants to law enforcement officers who wish to intercept, in the words of the statute, "any aural communication."

Now, that law has been applied to conventional telephone taps and there has not been much objection or problem. But today there are all sorts of dramatic new ways to communicate. Conversations are currently being converted into digital electronic signals and they are unscrambled at the other end of the communication. There are telephone lines which are used to communicate not only by voice but also by sending digital data, which has never been aural, which has never been in the form of sound.

In more and more cases, the parties to the communication may not even be people. It may be computers talking to computers. This affects the right to privacy, that enormously important concept that Justice Brandeis said was the most important right. Do you have any thoughts on whether the privacy protections currently on the books are adequate to protect the privacy of Americans who will be communicating in these new ways and perhaps in newer ways as time goes on?

Mr. **Meese**. Senator, I share your concern that with new technology the existing laws perhaps need to be revamped to include within the privacy protections new methods of transmitting messages of various sorts.

I know this is a matter of interest to you and to other Members of the Congress. To the extent that the Justice Department is involved in such matters—and actually it appears more within the purview of organizations such as the Federal Communications Commission and others—but to the extent the Justice Department might be involved in those matters or to provide expert testimony, if confirmed, I would certainly want to cooperate with the Congress.

Senator **Mathias**. Well, of course, it has very great bearing on practices within the Federal Bureau of Investigation. It has a bearing on other law enforcement activities which will be directly within your purview.

What I would hope is that you will be willing to work with this committee and particular with the subcommittee on patents, copyrights, and trademarks, which has a privacy function, because we are scrambling just to keep up with the new technologies, and I think Government will have to coordinate its effort in that field.

LEGISLATIVE VETO AND D.C. HOME RULE

Moving on to a local problem, as you know, the Supreme Court decided last spring that the legislative veto is unconstitutional. And one of the most important legislative veto provisions on the books is contained in the law that gives home rule to the District of Columbia.

I do not know whether your day has so far allowed you the leisure to read today's Washington Post editorial, "Democracy on Trial in the Capitol," which refers to the fact that we have been put in a kind of legal limbo in the District of Columbia.

I understand there are numbers of criminal cases that are not being tried in the District of Columbia Courts because of this legal uncertainty. Since July we have been working here in the Congress to find a solution to the problem that the *Chadha* decision poses in the District of Columbia. And we think we have made some sensible suggestions, but there has been resistance, either from the Department of Justice or from the District Building or from some source, and the parties simply have not come together.

Now, the government of the District of Columbia is functioning on an extremely precarious basis. This involves criminal prosecutions. It involves the enforcement of the law. It involves finance. And at some point we are going to reach a crisis. I would like to have some help on that problem before the crisis arrives.

Do you have any comment or suggestion as to what can be done in this area?

Mr. **Meese**. Senator, I do not have any particular comment at this time. I have not been a party to any discussions of this. I know only what I, like you referred to there, have read in the newspapers. I recognize, however, that the law enforcement consequences and public safety consequences and the governmental consequences are very grave, and if confirmed, this would be something in which I know, just from the standpoint of the U.S. attorneys in the District who are very much concerned about this, the Department of Justice would want to work and go forward quickly on.

Senator **Mathias**. Can I ask you to put somebody to work on this? Because if this thing blows up, we will all of us be putting a great deal of attention into it. And if it is given a little attention now by responsible people, I think we can find a solution. But it is a serious problem, and it would be humiliating for the United States to have government break down in the National Capital. We cannot let that happen.

We really need some leadership from downtown as well as all the efforts that we can put into it here.

Mr. **Meese**. I would certainly agree to that.

JUDICIAL SELECTION

Senator **Mathias**. I was interested in your discussion with Senator Kennedy on the question of judicial candidates. This certainly will be one of your most important functions. It is a function of Attorneys General, the results of which live on long after they have left the Department of Justice.

We have excellent trial judges in every circuit, judges whose experience will make them good appellate judges. Certainly the district courts ought to be one of the first places to look for nominees to the courts of appeals.

The State courts are logical places to look for candidates for the U.S. district courts as you did in the case of Judge Hargrove, whose name was mentioned this morning. I suspect that in judicial careers, as in every other walk of life, a little experience is helpful. Judges grow with their experience on the bench, so that prior judicial experience is an extremely important factor.

I wonder if you agree with that, and whether you think that prior judicial experience would be one of the critical factors that you would look to in recommending to the President the nomination of judges for the circuit courts and for the district courts.

Mr. **Meese**. Yes; I would, Senator. I think that prior judicial experience not only is an important qualifying factor, but it also provides an opportunity to assess the way in which a person would function as a judge; frequently if a person comes directly from the ranks of the legal profession without having judicial experience, sometimes their behavior can be much different after appointment.

Senator **Mathias**. But you are right. I am glad to hear your view on that because experience does determine whether or not they have that indefinable quality that is known as judicial temperament. And there is no other way to find out unless a man or woman has actually served on the bench.

JUSTICE DEPARTMENT AND SOCIAL ISSUES

You mentioned at some point in your testimony the question of high priorities, things that demanded attention. And certainly there are a number of problems that are before us all in Government that have high priorities simply because they are inescapable. They are the things that have to be done just to get through the day.

But then there are other things that may or may not have high priority. And I have observed in recent years, and this is not limited to the Reagan administration, that the Department of Justice has become more and more deeply involved in efforts that are not needed to enforce the laws, but that are intended to encourage fundamental changes in the organic law of this Republic, to amend the Constitution.

Just for example, I expect that next week the Senate will take up a proposal to amend the Constitution to provide for prayer and religious activities in public schools. When this proposal came to the Hill from downtown in 1982, it was accompanied by a detailed analysis, not by the sponsors of the bill, not by some interested public parties, but a detailed analysis by the Department of Justice.

And it recalled a constitutional crisis that had occurred during the administration of William Howard Taft. The Congress was out of town when some problem arose and President Taft asked the Attorney General to draft a bill over the weekend so that when the Congress reassembled it would not have to take the time to draft a bill. It would all be ready to go and they could act hastily. And all over the country an uproar arose. It was not up to the President or the Attorney General to draft bills. That was the function of Congress.

Well, of course, that is a function that has long ago been shared with the executive branch on a regular basis. But this is a further progression in that direction, in which the Justice Department sends up a detailed analysis as to why the Congress ought to amend the Constitution, not what the law is or what the effect of it would be, but why it ought to do this.

Now, certainly, part of the role of any Attorney General is to provide legal support for the legislative program of the administration in which he serves. Nobody questions that, and that might include proposals to amend the Constitution. But the question then arises as to what extent this kind of advocacy for fundamental social change diverts the Department of Justice from the central task, which is to enforce the laws of the United States of America.

And so my question is: What is your view of the proper role of the Federal Government in seeking to force fundamental changes in controversial social areas? The ones that are before us are school prayer and abortion, and that kind of social issue.

What do you think about devoting the resources of the Department of Justice to this kind of effort? Is a perfectly legitimate effort in its own way, but to what extent should it be supported by the Department of Justice?

Mr. MEESE. Senator, I think it is a matter of balance. If disproportionate resources of the Department of Justice were being taken away from the normal law enforcement functions or the normal litigation functions of the Department to support a wide variety and a wide-ranging group of administration programs, then I think there might be a problem. But, as in this case, I think that it is appropriate for some resources of the Department of Justice to be utilized in support of Presidential policies and Presidential programs because the Justice Department is in fact not only a part of the executive branch, but it is the lawyer for the executive branch.

And I think it is better to have a competent legal analysis done by the Department of Justice in some of these difficult social areas than to have something that is primarily advocacy that might be short on legal reasoning.

Senator **Mathias**. Well, I hope it is one that you will think about, because the question of maintaining that balance is a critical one for the Attorney General. It is easy to feel a sense of duty to an incumbent President, any incumbent President, and to want to support his policies.

But the function of the Department of Justice is not to advocate constitutional amendments, it seems to me; it is to enforce the law as it stands.

EXTRATERRITORIAL APPLICATION OF U.S. LAW

One quick question because yesterday you mentioned the need to keep industry competitive in the light of our $100 billion trade deficit.

Now, one of the complaints that we receive here in the Congress from businessmen all over the country is that extraterritorial application of U.S. laws hurts the export effort. A notable example is the case of Caterpillar Tractor.

In the 96th Congress, the Senate passed a bill to establish a task force to examine the extraterritorial application of law. The House failed to act on that and so it never was accomplished. I am wondering if you have any thoughts as to the value of such a study.

Mr. **Meese**. Senator, I believe at the present time the State Department has been working on that subject as it has come up in various ways. It has come up, as I am sure you know, in the matter of subpoena of bank records. It has come up, as you suggest, in export controls. It has come up more recently in the unitary tax cases. And I know that this is being explored in these various forms and on these various topics by the administration at the present time.

I would, however, not be at all adverse to examining whether there might be a need for an overall coordinating task force which would address the problem generically.

Senator **Mathias**. Well, let me say with the greatest respect for my friends in the State Department, I do not think they have moved along very expeditiously on that subject and I think a little cooperation and help from the Justice Department would move them along.

Here again is a case where we are hemorrhaging at the rate of $100 billion a year in trade deficits. Something needs to be done and you will certainly have a function in this area. I would urge you to take this aspect of giving advice to the administration on the legality of extraterritorial application of the laws. It is very, very serious.

LOGGING CONTACTS WITH ATTORNEY GENERAL

My final question is one that I feel compelled to raise because I did so with my friend, Griffin Bell, and that is the subject of the log, the famous log.

Elliott Richardson, during his tenure in the Justice Department, established a policy that the Attorney General would keep a log which would relate directly to the operation of the Department.

And it would be a log of all contacts made with the Attorney General, by the Attorney General, to the Attorney General on specific matters.

I put to Judge Bell the question of keeping the kind of log Elliott Richardson initiated. To his great credit, Judge Bell agreed to do that.

I am not sure that I can say that he volunteered to do it, but he agreed to do it. The interesting thing is that Senator Laxalt showed me Griffin Bell's book yesterday and I noted he said he was glad I had urged him to keep a log, that it had proved to be a useful instrument and that it had aided him in his duties as Attorney General.

Can I prevail upon you to keep such a record?

Mr. MEESE. Senator, I appreciate the suggestion and that is one thing I will consider very definitely. And right now I see no reason why I would not want to keep such a log.

Senator MATHIAS. We talked yesterday about the *Seattle school* case and there was some uncertainty about just how those contacts had been made, and of course a log would be of help in keeping a systematic check on exactly what is happening. I would urge you to do more than just consider it. Do it. Take the pledge.

Mr. MEESE. Well, Senator, if confirmed, I think I can assure you I will keep such a log. I generally do that in regard to many matters now, and I understand the resources of the Department are more extensive than what I have working for me at the present time.

Senator MATHIAS. Well, I thank you for that response, and I can only say that the experience of Griffin Bell would indicate you will not regret it. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. They are negotiating here on witnesses. In the meantime, Mr. Meese, I am not going to take any of my time; I am just going to ask you one question here. On February 8 of this year I spoke at the Regional Organized Crime Information Center's winter conference in Nashville, TN.

I was most impressed by the work being done by this group. If you are not familiar with this organization, it is the first of the six multistate, regional intelligence projects now officially called the Regional Information Sharing Systems. These organizations represent approximately 1,200 State and local law enforcement agencies in all 50 States. Their primary purpose is the exchange of information between member enforcement agencies. There are 16 States that belong to this particular region that I spoke to in Nashville, TN, on February 8.

Law enforcement officials in my State of South Carolina have the highest regard for the accomplishments of these projects. And I just wanted you to know that I fully support the efforts of these organizations.

And, Mr Meese, I was just wondering, after you have been confirmed as Attorney General, if you would be willing to meet with the heads of these projects, who are pushing law enforcement and doing such a fine job, within a reasonable time after you are confirmed and can meet in the office of the President pro tempore of the Senate I will assemble them there. And I think it would be very beneficial to you as well as to them.

Mr. **Meese**. I would be happy to meet with these officials, Senator, and I share your high regard for this operation.

The **Chairman**. The Senator from Arizona.

LAW ENFORCEMENT COORDINATING COMMITTEES

Senator **DeConcini**. Mr. Meese thank you for the fine work you have been doing the last couple of days. I have tried to keep abreast of the progress in these hearings and I know it has not been an easy task for you. However, you held up well.

I do want to thank the chairman for his courtesies in the handling of this meeting.

I would like to follow up on the question that the chairman just asked you, Mr. Meese, regarding the multiregional intelligence projects, now known as Regional Intelligence Grant Programs. Senator Laxalt and I, through the appropriation process for the last 4 years, have, over the objection of both the Carter administration and the Reagan administration, added funds in the appropriation committee for partial funding of grant programs to these various regional programs.

Last year the administration asked for zero dollars and we appropriated $9.9 million. This amount was approved and signed into law. The 1985 budget also calls for zero dollars and I hope that those of us interested in supporting these programs will prevail again in the Senate and the House to fund them at a very modest level.

I would like to know what your position is on such funding.

Mr. **Meese**. Senator, I do not feel I am now in a position to state definitely a position opposite to the administration. I will say that, if confirmed, it would be my purpose to look into this program to a greater extent and perhaps seek to persuade the administration to include it in the budget.

One of the things I would hope to do is examine the whole justice assistance area and try to determine certain priorities, and it would appear to me that this is the kind of program that does deserve a high priority on those funds that the Federal Government allocates for State and local activity.

Senator **DeConcini**. Mr. Meese, are you familiar with these six regional projects?

Mr. **Meese**. I believe I am, Senator; these are the same programs that in the past were like Operation Search and others that have brought together into this kind of an operation. I believe I am familiar with them.

Senator **DeConcini**. There are a number of States that have joined together on the State level, with little or no initial Federal assistance, to share intelligence on organized crime and narcotics. Now because of funding needs, small amounts of money have been put into the program by the appropriations committee.

I realize you have to follow the recommendations of OMB, but I think what I am looking for is an answer that will leave me and I hope the chairman, also satisfied that you are prepared to fight for continuation of these regional projects. You might lose the funding and, I understand that. However, I would like to know what efforts you will make to support funding for these regional programs.

Mr. **Meese**. Senator, as I say, if confirmed, I will look into it and obtain more information, and if, as I believe now, it has the value that I think it does, I certainly would fight for that kind of an appropriation within the administration.

Senator DECONCINI. You are not willing to testify that you will support funding unless you are overruled someplace else?

Mr. MEESE. Senator, I honestly do not know enough about the programs and what may have gone into the administration's decision. That is why I am a little hesitant to make a commitment beyond the one that I have made.

But I think that you will find that in this type of matter I am generally sympathetic to this type of thing. Unless there is something that I do not know, I can easily see myself supporting this type of thing in the budget.

Senator DECONCINI. Thank you. I would just like to ask that the chairman include me in the meeting scheduled with you if he would be so kind, because I am very high on these projects.

Mr. Meese, I know you had some discussions here earlier with Senator Biden regarding appropriations. I was not here for them and I have been advised that you would not commit yourself as to whether or not you would accept more money and what you would do with it if it was appropriated.

Yesterday, just to refresh your memory—and please correct me if I am wrong—we talked about the law enforcement coordinating committees. You were very knowledgeable about them and realize that they had not been utilized as much as they could. You also indicated that you would support and expand them, or at the least, get the full use out of them.

One of the problems is that only 60 percent of those committees that have met, have filed the required minutes of their meetings with the Justice Department. So maybe it will help you with Senator Biden if you can understand the importance we place on these LECC's. If you were granted the necessary funding, might this be one of the places you would allocate the dollars?

Mr. MEESE. Senator, it is my understanding that, as of this year in the new budget that is now pending before the subcommittee that handles the criminal justice appropriations, the full funding of these law enforcement coordinating councils with a separate coordinator for each is included in the budget for fiscal 1985.

If it is not, I would certainly take great pains to make sure that that in fact does happen.

OFFICE OF SPECIAL INVESTIGATIONS

Senator DECONCINI. Thank you. I am glad to hear that. Now, Mr. Meese, I would like to ask you a question regarding the Office of Special Investigations [OSI]. This office was created by Congress in 1978 to find and prosecute naturalized U.S. citizens who concealed their activities during World War II in order to enter the United States.

Recently it has been reported that OSI has collaborated closely with the Soviet Government, particularly the KGB in obtaining evidence against alleged Nazi war criminals. In some cases these individuals have been outspoken critics of the Soviet Government.

While I certainly approve of the purpose of the OSI program, I do have concerns about the close collaboration with the KGB and the possibility of the Soviet Government manipulating these investigations for their own purposes. Do you have any comments on, first, the Office of the OSI and its investigations?

Do you think it is proper for Justice Department prosecutors to rely heavily on the evidence obtained by the Soviet Government?

Mr. **MEESE**. Senator, I have not done an exhaustive search. I know of the existence of this department or this office within Justice. I do not know what its experience has been. This is someting that at your request I would be happy to look into, if I am confirmed, but I honestly do not know enough about it to give a judgment.

I would say that I think it is important that there be an independent evaluation of the quality of the evidence in these particular cases because of the source that you mentioned.

Senator **DECONCINI**. So, I can take it from that answer that if you are confirmed, you intend to closely scrutinize the evidence that is before the OSI on these cases and if much of it comes from the Soviet Government, you would reassess the use of that evidence. Is that correct? Is that a fair summary?

Mr. **MEESE**. That is a fair summary.

USE OF MILITARY AIRCRAFT IN DRUG INTERDICTION

Senator **DECONCINI**. Thank you. Mr. Meese, as you know over the past number of years, you and I have worked with the Defense Department to get certain aircraft, radar, and other equipment turned over to Customs to beef up their air interdiction program. The Pentagon has been most cooperative in providing P3A's, Blackhawk helicopters and F-15 radars. But I seem to have struck out in getting the military to turn over C-12 tracker aircraft.

I am also very interested in trying to get the Air Force to turn over four F-16 radar sets to Customs to be used on high performance tractor interceptor aircraft in the air program. At the same time, I will continue to recommend appropriate operations and maintenance funding at Customs to properly maintain all of this equipment.

As Attorney General, if confirmed, what specific steps would you plan on taking to encourage the Defense Department to provide equipment and aircraft to the drug interdiction agencies and to provide surveillance and intelligence support to civilian law enforcement agencies?

Mr. **MEESE**. Senator, if confirmed as Attorney General, I would take aggressive action, both on a personal basis working with the Secretary of Defense and the Secretaries of the services involved and also if necessary make this a major Cabinet issue, because I feel it is critical that we get the maximum support from the military services for the drug interdiction effort.

I might say that I have in the past taken such an advocacy position with those individuals and at the Cabinet table.

Senator **DECONCINI**. And as Attorney General that advocacy position is not going to diminish?

Mr. **MEESE**. No, sir; if anything, that would, I think, increase my responsibility to undertake that task.

FUNDS FOR DRUG ENFORCEMENT

Senator **DeConcini**. Mr. Meese, in March 1982 the President announced with great fanfare that he was appointing the Vice President to head a new major drug interdiction program called the National Narcotic Border Interdiction System. I know that you are familiar with this.

In your briefing that very same day you told me that this program represents the President's commitment to attack the drug smugglers around the entire border of our Nation.

Recently the President has sent to Congress a budget that calls for no new intiatives in the Coast Guard and the virtual dismantling of the Nation's major air drug interdiction program to the Customs Department.

This budget also calls for a sharp cut in the enforcement personnel at Customs. Over the last 2 years the President has recommended cuts of almost 3,000 people in Customs. I know that these cuts are not happening in your Department, but you have direct input regarding law enforcement. If and when you are confirmed, what would you do as Attorney General to see that the President's original March 1982 proposal headed by the Vice President, will in fact not result in cuts in the Coast Guard and Customs? Can you comment?

Mr. **Meese**. Senator, I believe that there has been a redirection of resources within the Coast Guard and in the Transportation Department to the narcotic interdiction effort.

In the case of Customs, I believe that over the past 3 years there have been considerable increases in personnel beyond what was requested by the administration, and that is the reason for the cut in personnel that is requested this time.

I also looked into that and understand that none of those personnel being cut are involved in the law enforcement efforts being directed at the drug interdiction program.

In the case of the aircraft, it is my understanding that that is based upon an assumption that the military will provide the maintenance for the aircraft involved.

If confirmed as Attorney General, it would be my purpose to verify all of the assumptions that I just mentioned and in the event that these assumptions are not accurate to work with the Department heads that are involved to see that adequate resources are provided for the continuation of what has been a very successful interdiction effort.

Senator **DeConcini**. Well, this year there is a reduction in Customs of in excess of 900 persons from the present existing force in Customs. Secretary Regan says these cuts consist mostly of clerical people and what have you. That is a lot of clerical people. I hope you will make a careful and close assessment of these cuts because I think anything that would reduce the air interdiction program would be quite contrary to what has been intended by its supporters. I am afraid that it is getting offtrack or somebody is not driving the train in the right direction.

I appreciate your commitment to look at that carefully.

BANKRUPTCY

Mr. Meese, the bankruptcy court system is presently in a chaotic state as a result of the Supreme Court decision in the *Marathon* case and its plenary jurisdictional delegation to nonarticle III bankruptcy courts, as constituted by the 1978 Bankruptcy Reform Act.

Probably the most raging legal question of the day is what type of bankruptcy court structure should be authorized by Congress: life tenured article III judges who are fully authorized to exercise the judicial power of this country; or a nonarticle III judge who would have lesser judicial powers which would necessarily mean that the bankruptcy courts would not be a one-stop judicial forum to resolve all bankruptcy related matters.

Over the years I have become a supporter of article III for a number of reasons, mostly to get the situation corrected so we can have a bankruptcy system. The Justice Department is also on record as supporting the article III approach.

Will you continue to endorse this?

Mr. **MEESE**. Senator, there is no doubt in my mind that the article III approach is the most sure way of meeting the 1st of April deadline and assuring that the judges that are appointed to handle bankruptcy cases are in fact qualified under the Constitution.

INTRACTABLE PAIN

Senator **DECONCINI**. Thank you. One other area of concern, Mr. Meese, is that I am a strong supporter of Senate bill 209 with Senator Inouye. There is a deeply humanitarian purpose behind it. The bill permits the use of heroin for medical application under strict controls. I have a strong history of concern about heroin and other narcotics and you will find me as advocate supporting your request for additional personnel in that area.

This bill has over 20 sponsors, including Senators Goldwater, Leahy, Matsunaga, Pell, Randolph, Riegle, Symms, Tsongas, Warner, Glenn, Abdnor, Levin, Hatfield, and Packwood, just to mention a few. I wonder if you are familiar with it. If you are not, I would ask you to keep an open mind and look at this very carefully. I appreciate any efforts on your part to see if the Justice Department can support it after you are confirmed.

Mr. **MEESE**. Senator, I certainly will keep an open mind and look at that matter.

Senator **DECONCINI**. As you may know, the heroin would be used for terminally ill cancer patients. I am deeply concerned that the wrong interpretation may be made and with the change in the Justice Department, it is a very good time to take a careful look at it.

COOPERATION WITH CONGRESS

My last question, Mr. Meese, concerns oversight by this committee or its subcommittees.

What is your philosophy about the oversight responsibilities of the Judiciary Committee and what will you specifically do to ensure that we have access to the various files that we might request from time to time from the Justice Department?

Mr. **Meese**. Senator, I have a great respect for the responsibility of the Judiciary Committee in carrying out its oversight function. I also have a great respect for the manner in which that has been exercised to preserve the necessary confidentiality of certain information within the province of the Department.

I would intend, to the extent I know these policies and procedures, to carry on the policies and procedures of the current Attorney General, if confirmed, which to the best of my knowledge have worked out very satisfactorily between the Department, the chairman, and the rest of the committee.

Senator **DeConcini**. I understand, then, that you will cooperate with us, and share those files in a confidential manner, if necessary, so that the committee is satisfied that at least we have the information before us even though we may not be able to use it in an open, public meeting.

Is that a fair assumption?

Mr. **Meese**. Senator, based on the assumption that that is the ongoing, current policy between the Department and the committee, that appears to be one that I would like to continue to follow.

Senator **DeConcini**. Mr. Chairman, that is all the questions I have. I may have a written question or two that I will submit. Thank you.

The **Chairman**. The distinguished Senator from Ohio has expressed the opinion that he would like to go continuously to carry his thoughts while he is questioning without being interrupted. So we have arranged for him to do that.

After he finishes, then we will take any other Senators if they have any other questions remaining. On this side, I believe we are about finished, unless Senator Specter has a few questions and Senator Leahy, I believe, over here.

Senator **Mathias**. Mr. Chairman, perhaps this is a moment in which I could ask unanimous consent to submit certain questions in writing and ask Mr. Meese to respond to them as part of the record.

The **Chairman**. Without objection, that will be done.[1]

Senator **Hatch**. I am willing to do the same, Mr. Chairman, if it will expedite these hearings.

The **Chairman**. Any Senator that has any questions to be submitted for the record will be allowed to do so, without objection.

The **Chairman**. Now, in view of that, it is about 3:15 now. It looks like it is going to take until about 6 o'clock, maybe, to finish with Mr. Meese today or longer if it is necessary. We will stay here until we do finish.

In view of that, I am thinking about these people who came here on these panels. Some of them have come from out of town. Some have come considerable distances. And I want to say to you people who have come here, regardless of which side you are on, that after we finish with Mr. Meese and if you are out of town, I will stay here and of course invite any Senators who wish to stay here and take your testimony so you will not be inconvenienced.

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[1] Can be found on page 778.

Now, you can either do that—I give you the choice of staying here and I will stay here with you and finish up with you or you can come back Monday morning if you prefer. So after we finish with Mr. Meese, then we will go to any of these panel members who feel they would be inconvenienced not to be taken this afternoon.

And if it is 8 or 10 o'clock tonight, I will stay here rather than inconvenience you people who have come here from other places.

Senator **Hatch**. Mr. Chairman, I will be happy to assist the Chair if the Chair needs assistance.

The **Chairman**. Well, that is very kind. I appreciate that. Senator Hatch and I have been called down to the White House. We have to leave shortly after 3:30. Senator Simpson has agreed to take over the hearing during that period. Senator Laxalt has been most helpful and if we get in a pinch, Senator, we may have to call on you, too.

Someone suggested to me we might want to take a 5-minute recess. So we will take a 5-minute recess and then after that, the distinguished Senator from Ohio will have the floor.

[Brief recess.]

The **Chairman**. The committee will come to order.

The distinguished Senator from Ohio, Mr. Metzenbaum.

Senator **Metzenbaum**. Mr. Chairman, there have been some questions that have been asked about Mr. Howard and Mr. Barrack and Mr. McKean, and as the chairman knows, and I think I just ought to make it public that Mr. Barrack and Mr. McKean, as I understand it, will be here Monday morning, and Mr. Howard, I was going to go out to take his deposition because he had indicated that he was not well enough to be here.

The White House has advised us that his doctor advised the White House, and I am not quite sure why the White House was advised but at least that is what the communications indicate that he was not well enough to participate in a Senate hearing.

We have spoken with his doctor, and as a consequence, my aide, Roy Meyers, will go to the west coast to take his deposition sometime tomorrow.

The **Chairman**. Excuse me just a minute, Senator, on that point, I would like to place in the record the text of a letter from Dr. Davenport which is self-explanatory.

Senator **Metzenbaum**. Fine. I think you may as well put the covering letter from the White House as well.

[Letters follow:]

THE WHITE HOUSE
WASHINGTON

March 2, 1984

MEMORANDUM FOR DUKE SHORT
INVESTIGATOR, SENATE COMMITTEE ON THE JUDICIARY

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Text of Letter From Mr. Irving Howard's Physician

Pursuant to our discussion, attached is a copy of the text of a letter from Dr. John C. Davenport, Mr. Irving Howard's physician expressing his opinion that Mr. Howard should not appear and testify before the Senate Committee on the Judiciary in conjunction with the ongoing confirmation hearing of Edwin Meese III, Attorney General, Designate.

Dr. Davenport may be reached at (714)891-4549.

Attachment

Text of Letter From Dr. John C. Davenport

To Whom It May Concern:

My patient, Irving Howard, has had arteriosclerotic heart disease. He has had myocardial infarctions in the past and later underwent bypass surgery.

At the present time, he is being treated with drugs to prevent cardiac arythmia and angina pectoris.

I feel it is inadvisable for him to appear before a Senate Committee at the present time. I feel it could put his life in jeopardy.

/s/ John C. Davenport, M.D.

Senator **Mathias**. Who did the Senator say is going to take the deposition?

Senator **Metzenbaum**. Mr. Meyers.

May I proceed?

The **Chairman**. You may proceed, Senator.

Senator **Metzenbaum**. Mr. Meese, in your testimony this morning you said that when you were first looking for a buyer, several people helped you including Pen James and Mr. Barrack. Did Mr. Barrack help you find Gavin Herbert one of the buyers of Nixon's home and did he help you find him to buy your house?

Mr. **Meese**. I believe Senator that I said several people helped but not necessarily when we first tried to sell the house. Mr. Barrack did not come into the picture until sometime in July or August 1982, and the answer is no, he was not in any way involved, to the best of my knowledge, in regard to Mr. Gavin Herbert.

Senator **Metzenbaum**. Who was trying to help you sell your house at that point?

Mr. **Meese**. I think Pen James, as I say, was one of them. As I also mentioned this morning, my former law partners, and other people who knew of our plight were as well. I probably do not know all of their names.

Senator **Metzenbaum**. Who did find Gavin Herbert? Do you know?

Mr. **Meese**. I am not sure. I do not have any recollection at this time. It may have been Mr. James. I am not sure.

Senator **Metzenbaum**. Mr. Meese, I want to go back to this document which, for purposes of identification is known as 3B and which has been introduced into the record.

Now, looking at that document, it reads as follows that the buyer has a son who is also going to reside in the house. Why was that there? Why did you make a note of that?

Mr. **Meese**. Is that 3B or 3C you are referring to?

Senator **Metzenbaum**. Well, I think it is 3B, but it is the longer one. It is the one that has Tom Barrack, open issue, trusteeship, Jim: Avoids publicity, et cetera.

Mr. **Meese**. OK; that is the document dated the 18th of August, is that correct?

Senator **Metzenbaum**. Right. I think it is the one you said you made while you were at your home.

Mr. **Meese**. I believe I was at my home. That was the information that was given to me over the phone by apparently, I believe it is Mr. Barrack, and I wrote it down as I got it.

Senator **Metzenbaum**. Now, you have a notation that says, "Open issue equals trusteeship," and there is a lot of emphasis on the trusteeship here. It appears that you, Jim, Tom, and Lee have a difference of opinion, at least according to these notes, as to whether to set up a trusteeship.

Why did you want a trusteeship and why were you concerned about it being a trusteeship? You were just selling your house.

Mr. **Meese**. Actually my attorney or someone among the people back there who we were talking about suggested the possibility of a trusteeship because, for one thing, I was not present to take action and to sign papers and so on; second, they were concerned about publicity because for anyone in public life there is a lot of publicity about these things, and they wanted to protect the third party buyer from a lot of unwanted publicity.

Senator **Metzenbaum**. Well, why would there be any publicity. You are selling a house for a fair amount, at least it does not seem to be that much higher or lower, market price, and the whole thing talks about Jim appears to like the idea of a trusteeship because it avoids publicity, but at this point there has been no publicity.

Why are you trying to avoid publicity? Are you trying to hide something?

Mr. **Meese**. Not at all, Senator. This was a suggestion there because almost everything that has happened to me in the course of the last 3 years has been attended by a great deal of publicity.

Senator **Metzenbaum**. Well, you seem to be interested in this sort of matter of keeping the facts from being too public. Jim seems to like a trusteeship because, in your words, it, quote, "filters one level of the 'tx' " and I guess "tx" means transaction. Is that your abbreviation for that?

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. "It filters one level of the transaction." Now, if this is a straightforward business deal, why were you trying to filter it through one level? Most people do not act in that manner.

Mr. **Meese**. I was not. I objected to the trusteeship and felt it was not a good idea, and we did not have a trusteeship.

Senator **Metzenbaum**. Then you windup and you say apparently do not agree and you windup and finally agree to have Mr. Lee Knutson, your former law partner, become the trustee.

Mr. **Meese**. No; there was no such agreement. That was proposed as a possible compromise.

Senator **Metzenbaum**. OK.

Mr. **Meese**. But that is not what happened.

Senator **Metzenbaum**. You note that Tom and Lee say, quote, "arm's length transaction." Why were they concerned about keeping this an arm's length transaction? Was there something funny about Mr. Howard's buying this property or Mr. Barrack's arranging it? Why do you go to so much effort to do that?

When you bought your home here in Maryland or in Virginia, you did not go to all those arrangements, and a lot of people in Federal Government who have come to this community sold their homes and they do not have all these fancy-dancy kind of arrangements. Why were you doing it, Mr. Meese?

Mr. **Meese**. Senator, this was being suggested by others because of the fact that, indeed, when we did buy our home in Virginia there was a great deal of publicity. I think it was on television. It was in news magazines and a great deal of publicity was accorded it, and they were cognizant of this fact when they made those suggestions.

Senator **Metzenbaum**. Why was there a great deal of publicity about the fact you were selling your home? Magazines and everything. Were those ads for the magazines?

Mr. **Meese**. No, sir.

Senator **Metzenbaum**. What is so unusual about a man selling his home?

Mr. **Meese**. This was the purchase of my home in McLean. In other words, we had gone through that experience. There were several articles in newspapers and magazines about the purchase of our home, and I believe there was a television program concerning me, along with other people who had joined the White House staff and the Cabinet, and the cost of our home, the fact that we bought it, when we bought it, the pictures of the home, and all were displayed publically here in this area during that period of time.

Senator **Metzenbaum**. It did not seem to hurt you too badly. It did not seem to hurt. You are here now as appointee to be Attorney General. Now, Tom Barrack, his only role in this picture is to be a broker or not a broker but to help sell the house, is that right?

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. Now, your notes state that Tom Barrack thought that the trust raises more problems. Why was Tom Barrack concerned about where there was a trust when he was only trying to help you find a buyer?

Mr. **Meese**. That is exactly what his function was, and he said, or at least my notes indicate, that he thought a trust was not a good idea, that it raised more problems.

Senator **Metzenbaum**. What kind of problems?

Mr. **Meese**. I do not know what he had in mind. I am just writing down what someone told me over the phone. I do not believe we discussed it beyond that.

Senator **Metzenbaum**. Well, now, Mr. Meese—excuse me. I did not mean to interrupt you.

Mr. **Meese**. There would certainly be more documents that had to be signed and that sort of thing.

Senator **Metzenbaum**. More documents to sell it to a trusteeship or to sell it to an individual?

Mr. **Meese**. Well, it was an unnecessary layer of activity that would have gone on, and that meant more problems.

Senator **Metzenbaum**. Well, Mr. Barrack said that the trust raises more problems.

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. Now, then, your notes describe how Mr. Howard will finance the purchase. You refer to a $240,000 loan. I assume the loan is to Mr. Howard from Great American, is that right, our friendly banker?

Mr. **Meese**. I believe so, yes.

Senator **Metzenbaum**. Now, yesterday you testified, in fact you went out of your way to correct the statement of the chairman that you did not know anything about the amount of Mr. Howard's loan for the home. I quote, "I do not know the amount of my own knowledge of the Howard loan since he took that out totally separate from any knowledge on my part."

Yet at the very moment that you are talking about this deal on the telephone with Barrack, you are working out the details of the financing that is going to be placed with our friendly banker, Great American, and you know the exact amount, you have it in your notes, and yet you say to us, "I do not know the amount, of my own knowledge, of the Howard loan since he took that totally separate from any knowledge on my part."

What are the facts?

Mr. **Meese**. The facts are exactly as I stated them yesterday. I do not know the amount of the note. I did not know the amount then. That is not a note. And furthermore, those happen to be figures that were given to me over the phone as to what the approximate financing would be. The purchase price there that they offered originally was showed to be $300,000. We ultimately settled for $307,500, which was different than the price there on the piece of paper.

So I do not know now and I did not know then what his arrangements were as to the total note from Great American Federal. There is no discrepancy whatsoever, Senator.

Senator **Metzenbaum**. Now, Mr. Meese, you said you do not know the amount. You do not know anything about it. I show you that which for purpose of identification is a copy of a document that you yourself made available to the committee being the deed of trust and which is the mortgage actually at the Great American Federal Savings & Loan, and it is from Mr. E.I. Howard and Luciann Howard.

How can you sit here and tell me you do not know anything about it and here the amount of it is actually stated $246,000? Now, which is the fact? Do you know or do you not know?

Mr. **Meese**. Senator, that is the first time I looked at the amount on that document. It was a matter of no import to me, and I do not ever remember seeing that document per se.

Senator **Metzenbaum**. Well, why did you have the buyers' mortgage instrument? When I sold my house recently, I do not know what kind of mortgage they got on it?

Mr. **Meese**. I did not have that, Senator. That came from Great American Federal to the White House counsel and was submitted to the committee. I have never seen it before.

Senator **Metzenbaum**. This was one of the things, if I am not mistaken—I will ask Mr. Short. Is not this one of the items that was submitted in the file by Mr. Meese?

Mr. **Short**. That came out of the letter, Senator, dated February 28, 1984, from the White House to the chairman.

Mr. **Meese**. That was prepared by White House counsel.

Senator **Metzenbaum**. These were documents in your possession that were provided to us from the White House?

Mr. **Meese**. No, sir, that was not in my possession. That came from the Great American Federal to the White House counsel and was submitted to the committee in response to a request from Senator Thurmond, which was handled by the White House counsel's office.

To the best of my knowledge, I have never seen that document.

Senator **Metzenbaum**. I am advised by my staff that in the meetings with the White House representatives, they indicated that they would only provide us with documents that were in your possession and none others.

Now, did they advise us inaccurately?

Mr. **Meese**. I do not know, Senator. All I can tell you is what I know of my own facts.

Senator **Metzenbaum**. And you say you have never seen this mortgage instrument.

Mr. **Meese**. To the best of my knowledge, I did not, no. I would have no reason, as you point out, to have a copy of the mortgage between Mr. Howard and the financial institution.

Senator **Metzenbaum**. I will ask committee counsel. Did Great American provide us with any set of documents?

Mr. **Short**. No, sir, these were received from Mr. Meese. There is no indication, though, where they came from, whether they came independently from counsel's office or from Mr. Meese personally.

Senator **Metzenbaum**. All right.

Mr. **Meese**. I just know, Senator, I did not have that in my possession, to the best of my knowledge.

Senator **Metzenbaum**. Well, the White House told us that the only thing we would have available is that which you had made available to them and nothing else.

Mr. **Meese**. I do know, Senator, that the White House counsel requested documents from Great American Federal so as to comply as much as possible with the wishes of the committee to have all the documents here.

Senator **Metzenbaum**. Back to your handwritten notes. It appears that the next day you called Jim and decided against the trust arrangement. Why was that?

Mr. **Meese**. Because I did not think it was either necessary or desirable.

Senator **Metzenbaum**. Now, Mr. Meese, I am frank to say to you this looks strangely to me like the report having to do with the contemplated sale to Gavin Herbert reported in the Los Angeles Times where somebody had to approve the buyer first as far as any connection to you, so that publicity can be avoided.

Now, you got this property on the market for what was it 18 or 22 months? And you got to Mr. Barrack. He arranges for a sale. The Great American Bank provides the money. Tell us really what all the circumstances and facts are, would you please?

Mr. **Meese**. I believe I have already stated the circumstances.

Senator **Metzenbaum**. Nothing else happened? That is all you were involved with?

Mr. **Meese**. The only thing that I know, Senator, of my own knowledge, is that Mr. Barrack advised me, as my notes indicate, that he had found a buyer for the home. I probably had one or more conversations with my attorney as this went forward.

The papers were presented to my wife and to myself for signature. We signed the papers, and the home was sold.

Senator **Metzenbaum**. Now, on the evening of August the 18th, 1982, you agreed over the telephone to Irv Howard for $307,500, right?

Mr. **Meese**. That is correct. I am not sure whether it was that evening or not. It may have been at some future time as to the exact amount.

Senator **Metzenbaum**. At that time you have a commitment from Mr. Howard to get a loan in the sum of apparently $240,000?

Mr. **Meese**. I wrote down $240,000 because I think that those were the arrangements being suggested at that time. I do not think we were willing to sell our home for the $300,000. I believe we wanted more money, and I believe we ultimately settled for $307,500.

Senator **Metzenbaum**. Well, how does somebody, how do you know, or how does Mr. Barrack know? Where is he?

Mr. **Meese**. He is in California.

Senator **Metzenbaum**. Yes; he is in St. Inez, and the Great American and this property is down in LaMesa. Mr. Howard is a stranger to the bank. He has never filed an application. There has never been a credit check done on him by the bank, and they all know that he is going to get a loan for $249,000; is that it?

Mr. **Meese**. No; it is not. I have no idea whether or not he filed an application. I would assume that he did. I do know whether they ran a credit check on him. I would assume that they did. I doubt if Great American is going to provide a loan to someone they do not know anything about, and I doubt if they did in this case.

Senator **Metzenbaum**. You said that you were not willing to take the $300,000. You wound up taking $307,500. How much more time did you negotiate in connection with the price?

Mr. **Meese**. I think it probably went another 10 days or 2 weeks. All I know is that the whole thing finally was settled, I believe, around the 2d of September but the deed of trust would probably show that.

Senator **Metzenbaum**. So it took about 10 days or 2 weeks of negotiations and you finally get them up to the $307,500; is that right?

Mr. **Meese**. That is the amount that was finally settled on. I do not remember at what stage during that period we actually settled on that amount.

Senator **Metzenbaum**. OK. Let us then take a look. This is on August 18, your notes. Ten days to two weeks is somewhere around September 4 or thereabout. As a matter of fact, this deal proceeded almost in world breaking fashion.

On August 19, the next day, the grant deed is drawn to turn over the home to the Howards, and you were in San Diego 2 days later to sign it. The 19th was a Thursday and the 21st was a Saturday, but you did not agree upon the price until sometime in September, is that what you are telling us?

Mr. **Meese**. No, I am sure I signed the papers——

Senator **Metzenbaum**. Before you had the price agreed upon.

Mr. **Meese**. No; I believe the price was agreed upon during that period of time.

Senator **Metzenbaum**. You just told me it was 10 days to 2 weeks later. I am telling you that on August 19 the grant deed is drawn. I am telling you that 2 days later you are in San Diego signing the papers, and yet you are saying to me that we did not agree upon the price for another 10 days to 2 weeks.

Mr. **Meese**. I cannot remember all the circumstances, Senator. I believe that at that time I was in California. I may have actually signed the grant deed sometime during that. I probably did know the price when I signed it.

Senator **Metzenbaum**. You signed it before you had agreed upon the price?

Mr. **Meese**. No, sir; I say I probaby did know the price when I signed it. I do not know what date I signed it. The 21st, do you say?

Senator **Metzenbaum**. Yes. The grant deed is drawn and the papers are drawn. They are signed, as I understand it, 2 days later in San Diego and notarized. Now, by Wednesday, the 25th, the papers are all drawn and approved for $246,000 mortgage for the Howards, and our friendly bank is always right there Johnny-on-the-spot, only 11 percent interest, and the mortgage is assumable.

At that point, according to what I have in my hand here, prime interest rates, the monthly average from January 1981, source Federal Reserve Bulletin monthly averages, in August the average prime rate was 14.9 and the average in September is 13.50.

Mr. Howard, unknown to the bank, he gets 11 percent rate, and the Howards sign the papers in Santa Inez, and for all intents and purposes, the home is theirs and your loans are all paid within a week, but we are still negotiating 10 days to 2 weeks later.

Mr. MEESE. No, I did not say that. I said sometime during that period.

Senator METZENBAUM. No; you said 10 days to 2 weeks later you probably arrived at the conclusion of the price.

Mr. MEESE. No; I said sometime during that period, Senator. I do not know when it was.

Senator METZENBAUM. What I am pointing out to you is that your notes say $300,000 on August 18.

Senator SIMPSON. Let us have an opportunity to give the nominee an opportunity to respond. I see no need for sarcasm.

Senator METZENBAUM. I am not being sarcastic. I think the Chair is being sarcastic.

Senator SIMPSON. No; the Chair has not said anything.

Senator METZENBAUM. Mr. Meese and I are getting along fine.

Senator SIMPSON. But the Chair has a hammer, so if you will, please conduct yourself appropriately; and I will be glad to stay here the entire day so that you may have your opportunity, and I assure you and pledge to you, you shall have it.

Senator METZENBAUM. I am going to do just that.

Senator SIMPSON. But I want the nominee to have the opportunity to respond.

Senator METZENBAUM. If I treat the nominee unfairly all he has to do is indicate by raising his right finger and I will stop immediately.

Senator SIMPSON. He might raise a different finger. [Laughter.]

Senator METZENBAUM. The Chair has a choice of language I am not going to get into. [Laughter.]

Before we were interrupted by the Chair, I had a question out there. Would the reporter be good enough to read it back?

[Whereupon, the reporter read from the record as requested.]

Senator METZENBAUM. Mr. Chairman, I will introduce into the record a copy of the deed dated August 19 and notarized as of August 21, 1982.

Senator SIMPSON. Without objection, so ordered.

[Copy of deed follows:]

RECORDING REQUESTED BY FIRST AMERICAN TITLE CO.

1308

82-271890

Order No.
Escrow No. 12591
Loan No.

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA
1982 SEP -1 PM 3:10
VERA L. LYLE
COUNTY RECORDER

WHEN RECORDED MAIL TO:

Mr. and Mrs. I. E. Howard
10911 Sunray Place
La Mesa, CA 92041

RF	4
MG	1
LF	10
INFO	ND
LF	

853376-1

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

DOCUMENTARY TRANSFER TAX $________

X Computed on the consideration or value of property conveyed; OR

— Computed on the consideration or value less liens or encumbrances remaining at time of sale.

Signature of Declarant or Agent determining tax - Firm Name

MAIL TAX STATEMENT TO RETURN ADDRESS AT : :

UNINCORPORATED AREA

502-070-46
502-081-07

GRANT DEED

502-70-46
502-81-7
[illegible] 502-81-*8 & *11
*1 *2 / PM 6099
7

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

EDWIN MEESE, III AND URSULA MEESE, husband and wife,

hereby GRANT(S) to I. E. HOWARD and LUCY-ANN HOWARD, Husband and Wife, as Community Property,

the real property in the City of
County of San Diego , State of California, described as

Lot 31 of Avocado Estates Unit No. 2, according to Map thereof No. 3843, filed in the office of the County Recorder of San Diego County, PER COMPLETE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF, DESIGNATED EXHIBIT "A".

PARCEL 2 and PARCEL 3, PER COMPLETE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF, DESIGNATED EXHIBIT "A".

Dated August 19, 1982

Edwin Meese III
Edwin Meese, III

Ursula Meese
Ursula Meese
By: [illegible]

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO } ss.

On August 21, 1982 before me, the undersigned, a Notary Public in and for said State, personally appeared EDWIN MEESE, III known to me to be the person __ whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Signature Lois J. Lofft

OFFICIAL SEAL
LOIS J. LOFFT
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN SAN DIEGO COUNTY
My Commission Expires Nov. 8, 1983

(This area for official notarial seal)

Nº 271890

82

MAIL TAX STATEMENTS AS DIRECTED ABOVE

EXHIBIT "A"

PARCEL 1:

Lot 31 of AVOCADO ESTATES UNIT NO. 2, in the County of San Diego, State of California, according to Map thereof No. 3043, filed in the Office of the County Recorder of San Diego County, October 3, 1962.

Together with that portion of the Northerly one-half of an existing 60.00 foot easement for road as shown and designated on Record of Survey Map No. 3249, filed in the Office of the County Recorder of San Diego County, December 11, 1953, which lies between the Southerly prolongations of the Easterly and Westerly line of Lot 31 of said Avocado Estates Unit No. 2.

Together with all that portion of Lot 30 of AVOCADO ESTATES UNIT NO. 2, according to Map thereof No. 3043, filed in the office of the County Recorder of San Diego County, October 3, 1962, described as follows:

Beginning at the Southeast corner of said Lot 30; thence South 89°41'30" West along the Southerly line of Lot 30, 127.69 feet to the true point of beginning; thence North 0°18'30" East 3 feet; thence South 89°41'30" East, 31.2 feet, to a point of tangency with a 41 foot radius curve concave Northwesterly; thence Northeasterly along the arc of said curve 31.32 feet through a central angle of 71°43'10"; thence South 71°25'00" 3 feet to the East line of said Lot 30; thence along the East line of Lot 30, South 18°35' West, 31.8 feet to the Southeasterly corner of said Lot 30; thence along the South line of said Lot 30, North 89° 41'30" West, 63.0 feet to the true point of beginning.

PARCEL 2:

The East 173.00 feet of the South 200.00 feet of the Northwest Quarter of the Northeast Quarter of Section 26, Township 16 South, Range 1 West, San Bernardino Base and Meridian, in the County of San Diego, State of California, according to United States Government Survey approved May 3, 1839.

PARCEL 3:

An easement and right of way for ingress and egress for road, water pipe line and other utilities purposes over the Northerly 30.00 feet of the Southerly 200.00 feet of the Northwest Quarter of the Northeast Quarter of Section 26, Township 16 South, Range 1 West, San Bernardino Base and Meridian, in the County of San Diego, State of California, according to United States Government Survey approved May 3, 1839.

EXCEPTING THEREFROM that portion lying West of the center line of Avocado Boulevard, as shown on Map of Mt. Helix Calavo Gardens Unit No. 4, according to Map thereof No. 2180.

ALSO EXCEPTING THEREFROM that portion lying within Parcel 2 above.

Nº 271890

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO } ss.
On August 21, 1963 before me, the undersigned, a Notary Public in and for said County and State, personally appeared LE ROY W. KNUTSON known to me to be the person whose name is subscribed to the within Instrument, as the Attorney in fact of URSULA MERKE and acknowledged to me that he subscribed the name of URSULA MERKE thereto as principal and his own name as Attorney in fact.

Signature Lois J. Lofft

LOIS J. LOFFT
Name (Typed or Printed)
Notary Public in and for said County and State

FOR NOTARY SEAL OR STAMP

OFFICIAL SEAL
LOIS J. LOFFT
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires Nov. 5, 1963

Senator **Metzenbaum**. Mr. Chairman, at this point I will also introduce into the record the Great American Federal Savings & Loan mortgage to I.E. Howard and Lucianne Howard dated August 25, and actually filed, signed in Santa Barbara on the 27th day of August 1982.

Senator **Simpson**. Without objection, so ordered.

[Aforementioned follows:]

Loan No. 152448-7 60mb 1310 82-271891

AND REQUEST OF FIRST AMERICAN TITLE CO.

WHEN RECORDED MAIL TO
Great American Federal Savings
and Loan Association
600 "B" Street
San Diego, California 92183
Attn: Secondary Market Dept.

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA
1982 SEP -1 PM 3:10
VERA L. LYLE
COUNTY RECORDER

SPACE ABOVE THIS LINE FOR RE

853376-1

502-070-16

DEED OF TRUST

RF 7
NG 1

THIS DEED OF TRUST is made this 25TH day of AUGUST 19 82, among the Trustor, I. E. HOWARD AND LUCY-ANN HOWARD, HUSBAND AND WIFE (herein "Borrower"), California General Mortgage Service, Inc., a corporation (herein "Trustee"), and the Beneficiary, Great American Federal Savings and Loan Association, a corporation organized and existing under the laws of the United States of America, whose address is 600 "B" Street San Diego, California (herein "Lender").

Borrower, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of SAN DIEGO, State of California:

PARCEL 1:

LOT 31 OF AVOCADO ESTATES UNIT NO. 2, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 5043, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 3, 1962, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF AS THOUGH CONTAINED HEREIN...

which has the address of 10911 Sunray Place (Street) La Mesa (City)
CA 92041 (State and Zip Code) (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are herein referred to as the "Property";

TO SECURE to Lender (a) the repayment of the indebtedness evidenced by Borrower's note dated August 25, 1982 (herein "Note"), in the principal sum of TWO HUNDRED FORTY SIX THOUSAND AND NO/100 Dollars, with interest thereon, providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on September 1, 1987; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained; and (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to paragraph 21 hereof (herein "Future Advances").

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, prepayment and late charges as provided in the Note, and the principal of and interest on any Future Advances secured by this Deed of Trust.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly installments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments which may attain priority over this Deed of Trust, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof.

The Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Deed of Trust that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Deed of Trust.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days from the date notice is mailed by Lender to Borrower requesting payment thereof.

Upon payment in full of all sums secured by this Deed of Trust, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 18 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, then to the principal of the Note, and then to interest and principal on any Future Advances.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Deed of Trust; provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require; provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Deed of Trust.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the insurance carrier.

All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. If under paragraph 18 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

6. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If a condominium or planned unit development rider is executed by Borrower and recorded together with this Deed of Trust, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Deed of Trust as if the rider were a part hereof.

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law. Borrower shall pay the amount of all mortgage insurance premiums in the manner provided under paragraph 2 hereof.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Deed of Trust such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments.

10. **Borrower Not Released.** Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest.

11. **Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

12. **Remedies Cumulative.** All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

13. **Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

14. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

15. **Uniform Deed of Trust; Governing Law; Severability.** This form of deed of trust combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property. This Deed of Trust shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the Note are declared to be severable.

16. **Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.

17. **Transfer of the Property; Assumption.** If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Lender and that the interest payable on the sums secured by this Deed of Trust shall be at the then existing terms of this obligation. If Lender has waived the option to accelerate provided in this paragraph 17, and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Deed of Trust and the Note.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 14 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 18 hereof.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

18. **Acceleration; Remedies.** Except as provided in paragraph 17 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 14 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

19. **Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust, the Note and notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided in paragraph 18 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the

sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. *Assignment of Rents; Appointment of Receiver; Lender in Possession.* As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 18 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 18 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

21. *Future Advances.* Upon request of Borrower, Lender, at Lender's option prior to full reconveyance of the Property by Trustee to Borrower, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

22. *Reconveyance.* Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

23. *Substitute Trustee.* Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

24. *Request for Notices.* Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property Address.

25. *Statement of Obligation.* Lender may collect a fee not to exceed $15 for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

In Witness Whereof, Borrower has executed this Deed of Trust.

x I. E. Howard
I. E. HOWARD —Borrower

x Lucy Ann Howard
LUCY-ANN HOWARD —Borrower

State of California, Santa Barbara County ss:

On this 27 day of August, 19 8, before me, the undersigned, a Notary Public in and for said State, personally appeared I.E. HOWARD AND LUCY-ANN HOWARD, known to me to be the person(s) whose name(s) ARE subscribed to the foregoing instrument and acknowledged that THEY executed the same.

Witness my hand and official seal.

Signature: Sheila L Pearson
Sheila L Pearson
Name (typed or printed)
My Commission expires: Oct 15 1985

SHEILA L. PEARSON
My Commission Exp. Oct. 15, 1985

REQUEST FOR RECONVEYANCE

TO TRUSTEE:

[illegible]

State of California
County of Santa Barbara } ss.

On this the 27th day of August 19 82 before me.
Sheila L. Pearson
the undersigned Notary Public, personally appeared
I.E. Howard and Lucy Ann Howard

known to me to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Sheila L. Pearson

SHEILA L. PEARSON
My Commission Exp. Oct. 15, 1985

GENERAL ACKNOWLEDGMENT FORM 7110 041

NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • Woodland Hills, CA 91364

EXHIBIT "A"

PARCEL 1:

Lot 31 of AVOCADO ESTATES UNIT NO. 2, in the County of San Diego, State of California, according to Map thereof No. 5043, filed in the Office of the County Recorder of San Diego County, October 3, 1962.

Together with that portion of the Northerly one-half of an existing 60.00 foot easement for road as shown and designated on Record of Survey Map No. 3249, filed in the Office of the County Recorder of San Diego County, December 11, 1953, which lies between the Southerly prolongations of the Easterly and Westerly line of Lot 31 of said Avocado Estates Unit No. 2.

Together with all that portion of Lot 30 of AVOCADO ESTATES UNIT NO. 2, according to Map thereof No. 5043, filed in the office of the County Recorder of San Diego County, October 3, 1962, described as follows:

Beginning at the Southwest corner of said Lot 30; thence South 89°41'50" East along the Southerly line of Lot 30, 127.69 feet to the true point of beginning; thence North 0°18'10" East 3 feet; thence South 89°41'50" East, 31.2 feet, to a point of tangency with a 41 foot radius curve concave Northwesterly; thence Northeasterly along the arc of said curve 51.32 feet through a central angle of 71°43'10"; thence South [illegible]1°25'00" 3 feet to the East line of said Lot 30; thence along the East line of Lot 30, South 18°35' West, 31.8 feet to the Southeasterly corner of said Lot 30; thence along the South line of said Lot 30, North 89° 41'50" West, 63.0 feet to the true point of beginning.

PARCEL 2:

The East 173.00 feet of the South 200.00 feet of the Northwest Quarter of the Northwest Quarter of Section 26, Township 16 South, Range 1 West, San Bernardino Base and Meridian, in the County of San Diego, State of California, according to United States Government Survey approved May 3, 1859.

PARCEL 3:

An easement and right of way for ingress and egress for road, water pipe line and other utilities purposes over the Northerly 30.00 feet of the Southerly 200.00 feet of the Northwest Quarter of the Northwest Quarter of Section 26, Township 16 South, Range 1 West, San Bernardino Base and Meridian, in the County of San Diego, State of California, according to United States Government Survey approved May 3, 1859.

EXCEPTING THEREFROM that portion lying West of the center line of Avocado Boulevard, as shown on Map of Mt. Helix Calavo Gardens Unit No. 4, according to Map thereof No. 2180.

ALSO EXCEPTING THEREFROM that portion lying within Parcel 2 above.

INITIALS

Senator METZENBAUM. Now, are you aware of the fact that 3 months later Mr. Howard put the property up for sale and that he then sold it 8 months later, that is 5 months over and above the 3 months, at a price $32,000 less than he paid you and probably lost the $32,000 plus about something around $20,000 in interest? Are you aware of that?

Mr. MEESE. I am aware of that now; yes, sir.

Senator METZENBAUM. I will get into further questions on this subject with Mr. Howard and Mr. Barrack and possibly I will want to come back to you for further questions, Mr. Meese.

Senator SIMPSON. Does that conclude your questions, Senator Metzenbaum, at this moment?

Senator METZENBAUM. No.

Senator SIMPSON. All right. Fine. I wondered if you wanted me to switch over to someone else.

Senator METZENBAUM. No; I think there is an understanding, Mr. Chairman, that I am be permitted to go on until I conclude my interrogation.

Mr. Meese, I would now like to turn to the situation regarding your Army Reserve promotion to colonel, and I am aware of the fact that the Chair at an earlier point referred to this, but I think there are some aspects of it I would like to get into.

First, a clarification, if you will. It was my understanding in your testimony Thursday that you said you were now going or have asked to be transferred back to the Retired Reserve. Is that correct?

Mr. MEESE. Yes, sir; that is correct.

Senator METZENBAUM. The Washington Post reported that you also are rescinding your rank of colonel and reverting back to lieutenant colonel. Is that also correct?

Mr. MEESE. No, sir.

Senator METZENBAUM. Then will you tell me what the facts are.

Mr. MEESE. The facts are that I am requesting a transfer to the Retired Reserve and my grade is colonel, so I will be returning to the Retired Reserve as a colonel.

Senator METZENBAUM. So the Post was wrong. OK. No argument.

There are several people to whom we will be referring during this questioning. And I would like to first go over their names and positions and have you identify them and tell the committee what your relationship with them has been. First, Col. Joseph B. Sullivan.

Mr. MEESE. Colonel Sullivan is a gentleman who served in the administration in California, was a member of a Reserve unit that I was with in California and was during and at the end of the Carter administration, and it lapped over into this administration, on duty at the Pentagon, I believe in the Office of the Chief of the Army Reserve.

Senator METZENBAUM. He had been a part of the administration when you were in it in California?

Mr. MEESE. Yes; he had been the director of the department of commerce, I believe.

Senator METZENBAUM. Thank you. And Gen. William Berkman.

Mr. **Meese**. General Berkman is presently the Chief of the Army Reserve. He had been my commanding officer when I was a member of a military reserve unit in California.

Senator **Metzenbaum**. Were you classmates in law school also?

Mr. **Meese**. No, sir.

Senator **Metzenbaum**. Did you go to the same law school?

Mr. **Meese**. Yes, sir; we did. He was, I think, some years ahead of me, although I think for 1 year of my law school we may have been in school at the same time. I did not know him at that time.

Senator **Metzenbaum**. William Clark, Deputy Assistant Secretary of the Army Manpower and Reserve Affairs?

Mr. **Meese**. I am acquainted with Mr. Clark; I have met him on occasion. I do not know him very well.

Senator **Metzenbaum**. Edward Philbin, same title, Deputy Assistant Secretary of the Army Manpower and Reserve Affairs?

Mr. **Meese**. No; Dr. Philbin is the Deputy Assistant Secretary of Defense for Reserve Affairs.

Senator **Metzenbaum**. I see. And do you know him?

Mr. **Meese**. Yes.

Senator **Metzenbaum**. And how did you know him and how far back?

Mr. **Meese**. Dr. Philbin and I served on the faculty together at the University of San Diego Law School, although I did not know him very well at that time, and since then he has come to Washington. I know him.

Senator **Metzenbaum**. Maj. Gen. Hugh Overholt, Office of the Advocate General?

Mr. **Meese**. I do not know him.

Senator **Metzenbaum**. You do not know him?

Mr. **Meese**. No, sir; I do not believe so. I may have met him at some time, but I do not recognize that name.

Senator **Metzenbaum**. Brig. Gen. Charles Briggs, Commander, Reserve Components Personnel and Administration Center.

Mr. **Meese**. What is the last name again?

Senator **Metzenbaum**. Briggs.

Mr. **Meese**. Briggs? I do not know him.

Senator **Metzenbaum**. Thomas Turnage, Director, Selective Service?

Mr. **Meese**. General Turnage, I do know. He is my commanding officer, in effect, as Director of the Selective Service System.

Senator **Metzenbaum**. In yesterday's questioning by the chairman I believe you said it was suggested to you that you might want to get back in the Ready Reserve; is that correct?

Mr. **Meese**. That is my recollection. I remember having a conversation, at least, about that.

Senator **Metzenbaum**. Well, your testimony was, Mr. Meese:

> Mr. Chairman, in 1981, on or about July 1 of that year I had had some informal conversations as to whether I would be interested in returning from a Retired Reserve status to an Active Reserve status in a mobilization designation position with the headquarters of the Selective Service Commission.

That would seem to indicate that someone had spoken to you about whether you would be interested in——

Mr. **Meese**. I had had a conversation about it anyway, yes. I do not remember how the conversation began or who initiated it. I believe there is a correction there. It is not Selective Service Commission. It is Selective Service System.

Senator **Metzenbaum**. Whatever. From what you said yesterday, I believe you have familiarized yourself with the Army inspector general's report; is that correct?

Mr. **Meese**. Yes, sir; I have.

Senator **Metzenbaum**. Let us go through it, then, step by step because I think it is important to this hearing.

According to the inspector general's investigation you were at a social function in California where you talked with Colonel Sullivan about the situation. Colonel Sullivan is identified as being attached to the Chief, Army Reserve.

The investigators state: "Mr. Meese informally expressed a desire to return to an active role in the Reserve." Period, end of quote.

Now, that would seem to indicate that you brought it up. Your testimony yesterday would seem to indicate that Colonel Sullivan had brought it up. What is the fact?

Mr. **Meese**. I honestly do not remember. My recollection was that he brought it up. Apparently, from what you read there, the inspector general's report could indicate that I brought it up. It is entirely possible. I believe the social event that we are talking about was probably the Civil Affairs Association meeting in California.

And I may have said something like "I wish I was back in the Reserve again" or something like that. That may have been the way that the conversation ensued. I do not know.

Senator **Metzenbaum**. What kind of a meeting was that you were attending?

Mr. **Meese**. The Civil Affairs Association of the U.S. Army.

Senator **Metzenbaum**. Now, I want to indicate for the record that the inspector general's report states that you admonished Colonel Sullivan you wanted no special favors. Then I think we have to see what happens after that.

Do you recall the date of the conversation with Colonel Sullivan? Was it closer to the end of June than the beginning?

Mr. **Meese**. I do not remember the exact date. I remember having a conversation. I do not remember even the date or place. I am relying upon what you mentioned from the inspector general's report. If it was in California, I believe that was the only time I was in California that month.

Senator **Metzenbaum**. All right. Now, according to the report a high level meeting was convened in the Pentagon in late June. At that meeting were General Berkman, General Overholt, General Briggs, Colonel Sullivan, and Mr. Clark, attached to the Secretary of the Army. The subject was your transfer from the Retired Reserve to the Ready Reserve.

The statement from the investigators is: "The general consensus that it could be done"; in other words, meaning that your transfer could be done.

The investigators first point out that in 1977 by regulation you had two choices. Actually, it appears that there was not much choice between the two choices. Because you had failed to complete the command and general staff college within 3 years of the date of your promotion to lieutenant colonel, the choice was either to be placed in the Retired Reserve or be discharged.

So you went in the Retired Reserve. Is that correct?

Mr. MEESE. That is correct.

Senator METZENBAUM. There was a deadline involved in all these actions, as I understand it. If nothing happened to your status by July 7, 1981, July 7, 1981—that is an important date—you would be automatically retired.

In Army terminology that date was your mandatory retirement date or MRD, as it is known. Is that correct?

Mr. MEESE. I will accept your characterization of it. At no time was that discussed with me nor did I have any knowledge of that until I read the inspector general's report.

Senator METZENBAUM. According to the investigators, on July 1 "flurry of activity occurred." Here is what they say happened. First, on July 1 we find a letter from General Berkman to General Briggs, transferring you from Retired Reserve to Ready Reserve.

You are put into an inactive control group and I believe that group's base is St. Louis, MO. Is that correct?

Mr. MEESE. Again, I will accept your characterization. I did not have any knowledge of this of my own knowledge.

Senator METZENBAUM. You never reported to St. Louis?

Mr. MEESE. Well, actually, an inactive control group is a records center, and nobody reports to it.

Senator METZENBAUM. Naturally, you did not; I did not expect that you did because on July 2, the next day, there is a letter from General Briggs assigning you to what is known as a mobilization designation or MOBDES, at the headquarters of Selective Service in Washington.

In fact, Mr. Meese, there had not even been such a position at Selective Service for more than 12 years. On the same day, July 2, a request was received from Selective Service requesting establishment of such a position.

Were you aware of that at that time?

Mr. MEESE. No, sir.

Senator METZENBAUM. You have been made aware since, I assume, have you not?

Mr. MEESE. Yes, sir, by the inspector general's report.

Senator METZENBAUM. Now, when you spoke with Sullivan, according to your testimony, you said the following:

> I had some informal conversations as to whether I would be interested in returning from a Retired Reserve status to an Active Reserve status in a mobilization designation position with the headquarters of the Selective Service Commission.

Now, all of that seems to follow the pattern for what subsequently happened to you, although you were not actively involved in each of those steps; is that not correct?

Mr. MEESE. That is correct.

Senator METZENBAUM. The position required a staff specialist. Your specialty was military intelligence, right?

Mr. MEESE. Yes, sir.

Senator METZENBAUM. So you got a letter from the Army changing your classification to staff specialist and that did not take very long. That was also dated July 2. Are you aware of what the investigators said about all this? Maybe we ought to go through what they said in the inspector general's report.

First, because you were involuntarily placed in the Retired Reserve in 1977 for failure to complete command school, you could not under Army regulations be authorized to be returned to an active status, but a loophole was found. Under U.S. Code, 10 U.S.C. 1335, the Secretary of the Army or someone at the secretariat level is authorized to transfer an individual who is eligible for retired pay under 60.

However, there were two things wrong with transferring you back to the Active Reserve. First, the investigators point out that although the code is there, there are no actual Army regulations that implement this section of the code; and, second, even if there were, there was no authorization at the secretariat level.

Next the Army regulations say that an individual brought back from Retired Reserve to inactive duty must stay there for 1 year, but it can be waived to 6 months. Mr. Meese, it was not 6 months in your case.

You were put on the inactive list on July 1 and assigned to Selective Service on July 2. Any other officer would have had to stay inactive for probably a year and with a waiver only 6 months. You were put on the list in 24 hours. Would it be fair to say and would you not agree that you did receive special treatment because you are who you are?

Mr. MEESE. Senator, all I can say is that, as the report reflects, I certainly did not seek special treatment. Indeed, I specifically asked not to have any special treatment. All of the actions that you have described were totally unknown to me.

Senator METZENBAUM. But would you not—would it not be fair to characterize the treatment you received, one of the three most powerful men in our Government, as being—having received special treatment that probably no other individual could have received?

Mr. MEESE. I have no knowledge whether that is true or not, whether others have or have not received it. I will accept the finding of the inspector general.

Senator METZENBAUM. Next, the person who is assigned to a MOBDES position must be available in the event of mobilization. Is that your understanding?

Mr. MEESE. That is my understanding; yes, sir.

Senator METZENBAUM. My information is at some point Mr. Philbin sent a request to the White House for a list of essential positions, people who could not be made available in the event of mobilization and your name was not on the list.

In other words, the President was saying that in the event of a national emergency, he does not need you and you can be called up by the Army. Is that not correct?

Mr. MEESE. I have no knowledge of that action, either.

Senator METZENBAUM. Now I will read you some interesting comments by the investigators. By the way, their comments and conclusions were agreed to by the inspector general himself, which is quite an unusual procedure. He concurred:

> Testimony from witnesses established that the Selective Service position created for Meese was the first position so created since 1969. Witnesses stated that the establishment of such positions had been discontinued by then Director of Selective Service, General Hershey, because those positions served merely as a haven for indi-

> viduals seeking an extension of their mandatory requirement date or less stringent military education requirements for retention and/or promotion.
>
> Witnesses also stated that the position appears to have been created for Mr. Meese as opposed to the need for the position arising and then having a qualified individual being selected for it.

The investigators also say that—

> Regulations were not followed allowing some educational requirements to be substituted for what was required.

And they point out that the decision to transfer you to Ready Reserve not only violated Army regulations, but as well it violated the intent of the U.S. Code.

You have read those statements in the inspector general's report?

Mr. MEESE. Yes, sir.

Senator METZENBAUM. The investigators go on:

> Many other facts involved in the transfer of Mr. Meese were inappropriate, administratively incorrect, and as a minimum give the appearance of impropriety.

They point out that all actions occurred on July 1 and 2 and they say this conveyed the appearance of a frantic flurry of activity to ensure that Mr. Meese was assigned to the Selective Service before his mandatory retirement date on July 7. And they point out that July 2 was the next to last working day prior to that date because of the 3-day Fourth of July weekend.

And they point out that this frantic rush resulted in even more administrative errors. While they could be construed as minor, they go on: "They might very well be considered as reasons in themselves to invalidate the actions if they involved other officers not in a position of prominence."

And finally here are two excerpts from the report that I feel probably hit the nail right on the head:

> The investigators point out that regulations clearly state that Department of the Army personnel will avoid any action whether or not specifically prohibited which might reasonably be expected to create the appearance of giving preferential treatment to any person. In this case, for one even vaguely familiar with the facts, the appearance if not the fact the special treatment accorded to Mr. Meese is glaring. Because of his position, any reserve assignment is inappropriate. Admittedly this is speculation, but we find it inconceivable that he would give up his White House position in the event of mobilization to serve as an officer in the Selective Service.

Mr. Meese, that is the Army's statement, not mine. But I would have to concur wholeheartedly in the conclusion. And finally they venture an opinion. "Mr. Meese was selected not on the basis of his past military performance, but rather on the basis of national prominence."

Yesterday the chairman read some of the report's conclusions and he accurately noted that the investigators found no evidence or testimony that led them to conclude that you had exerted undue influence. However, here is what they also said:

> Nevertheless, as noted earlier, Mr. Meese, despite his disclaimer, was accorded special treatment and consideration that far transcended that which might be considered reasonable.

Mr. Meese, after looking at the report and after hearing all of this, would you agree with their conclusions?

Mr. MEESE. With the conclusion that I had nothing to do with it, I certainly would.

Senator **Metzenbaum**. That is not the conclusion about which I am speaking.

Mr. **Meese**. Oh, I am sorry.

Senator **Metzenbaum**. And I think you know better. You know that that is not what I was talking about. The conclusion was and the last one I read was:

> Nevertheless, as noted earlier, Mr. Meese, despite his disclaimer, was accorded special treatment and consideration that far transcended that which might be considered reasonable.

Would you agree?

Mr. **Meese**. Let me say, Senator, again that this was against my wishes. As a matter of fact, I feel that I was the victim of bad judgment within the Army.

Senator **Metzenbaum**. You were the one who discussed it and then all of a sudden the machinery started to work very rapidly, whether you brought it up or they brought it up. It is sort of unusual for me to think that they would come to you at a social party and suggest, say, old fellow, would you like to be switched over to the Active Reserve. And we know the results.

Now, how could you and Sullivan discuss Selective Service if there was no position or does this mean that you laid out the plan to him or did he lay out the plan to you because you talk about Selective Service here, a mobilization designation with the headquarters of the Selective Service Commission.

How could you be talking about it when there was no such position unless either you—only you could have had it in mind because there would be no reason for Sullivan even to know that your commission was expiring, that you only had days left, unless you told him.

Mr. **Meese**. Senator, I did not know at that time that I only had 7 days left. I was totally oblivious. This was a general conversation that we had and at the Civil Affairs Association, which is a military event that most reservists attended. That is why the subject of the Reserve came up.

Senator **Metzenbaum**. Well, you testified that "I had some informal conversations as to whether I would be interested in returning from a Retired Reserve status to an Active Reserve status." You must have known your commission was expiring or why else would you be talking about it?

Mr. **Meese**. Because the subject just came up as we were at this military function. I had no idea of what my mandatory removal date was. I was in the Reserve and had been in the Retired Reserve since 1977.

Senator **Metzenbaum**. That is usual cocktail talk, I guess.

Mr. **Meese**. It is at Army Reserve functions, yes.

Senator **Metzenbaum**. Mr. Meese, I have been informed that the normal term of duty of the Chief of the Army Reserve is 4 years. General Berkman, your friend and classmate in part at least from California was appointed in 1979. In the normal course of things if there would have been a turnover, he would have been replaced in 1983. Are you aware of the fact that the same day you were confirmed by the Senate for your promotion to colonel in 1983, that General Berkman was reappointed for another 4-year term?

Mr. **Meese**. I am aware that he was reappointed. There was no connection between that. That happened to be the day that I was confirmed by the Senate.

Senator **Metzenbaum**. Had you discussed it with him?

Mr. **Meese**. The reappointment?

Senator **Metzenbaum**. Yes.

Mr. **Meese**. I do not remember ever discussing it directly with him, no.

Senator **Metzenbaum**. Well, can you tell us of any and all conversations that you had with General Berkman since June 1981.

Mr. **Meese**. I cannot tell you. There may have been half a dozen instances where I have seen him at social events or military events where I talked with him. I do not remember the subject of the conversations.

Senator **Metzenbaum**. Now, Mr. Meese, you indicated in your response that you did not discuss the appointment directly with General Burkman.

Mr. **Meese**. I do not believe I did. I may have at some time, that he was coming up for renewal of his tour.

Senator **Metzenbaum**. Did you discuss your own appointment with him?

Mr. **Meese**. No; I do not believe I ever did

Senator **Metzenbaum**. Can you tell me who else besides Colonel Sullivan you discussed your own transfer with?

Mr. **Meese**. At that time, I do not believe I discussed it with anyone other than Colonel Sullivan. It is possible that I might have discussed it with someone, but I do not remember anyone.

Senator **Metzenbaum**. Well, you say "at that time." When did you discuss it with others?

Mr. **Meese**. After I was returned to a mobilization designation status, obviously, I discussed it with others.

Senator **Metzenbaum**. Now, Gen. Thomas Turnage, the Director of the Selective Service, was not confirmed by the Senate until September 1981, and that was about 3 months after your transfer to Selective Service. But coincidentally, on July 2, 1981, which just happens to be the same day that you were assigned to Selective Service, the President announced his intention to name General Turnage to that post.

Now, that is quite an unusual circumstance, I am sure you would agree.

Would you be good enough to relate any and all conversations and meetings you have had with General Turnage since June 1981?

Mr. **Meese**. Oh, I cannot remember all the meetings. He was the executive officer of the military manpower task force, and I met with him frequently. As a matter of fact, sometime in the spring, I believe, of 1981, the military manpower task force was generated as an idea and General Turnage was recommended as its executive officer, as well as for the position of Director of the Selective Service System.

Senator **Metzenbaum**. And the very day on which they worked out the arrangement for you to be transferred to be the liaison officer for Selective Service to the Department of Defense, the same day on which the President announces his appointment of General Turnage to be the head of Selective Service—just all coincidental?

Mr. **Meese**. Well, that would indicate that it was a coincidence, Senator, because it takes anywhere from 4 to 8 weeks for someone to process through the personnel system of the White House.

Senator **Simpson**. I can testify to that, Senator Metzenbaum.

Senator **Metzenbaum**. I will be calling upon you for your testimony at an appropriate point.

Senator **Simpson**. Oh, will you? I do not know that I will enjoy that, but I will try.

Senator **Metzenbaum**. Mr. Meese, let me ask once more. Yesterday, you said that, "I had some informal conversation as to whether I would be interested."

Now, that indicates somebody else is bringing up the subject, that they are talking to you. Now, it would appear from the evidence today that they did not bring it up, but that you had brought it up at this affair; that they got the message, and that they not only expedited the process, but that they did it in almost an alarming, an emergency manner.

Yesterday, when you told us that language you used as to whether you would be interested, was that a little bit inaccurate, and was it really you who had brought it up?

Mr. **Meese**. No, sir; I do not know who started the conversation, but the idea that there was a way in which I could return to reserve duty was brought up by others.

Senator **Metzenbaum**. Well, how do you account for the fact that when you talk about this position at Selective Service, there was no position, and there is no reason at all for you to be talking about such a position with Colonel Sullivan. That is not even in his area of activity. And you are saying that they are coming to you and asking if you would be interested. There is no position; there is no such position. But the White House Counsellor at a party indicates what he thinks might be able to be done, and therefore, one has to conclude, from what you told us yesterday as to whether you would be interested, just cannot be in accordance with the facts, Mr. Meese, as I see it.

Now, maybe I do not understand well.

Mr. **Meese**. Well, Senator, all I can say is that I had a conversation in June that had to do with the possibility of whether I would be interested in getting back into the reserve in a mobilization designation position. I am not sure whether Selective Service was mentioned at that time or not as the way to do it. Ultimately, I found out that was a way in which it could happen. But all I remember is that there was a conversation. I did not bring up the fact that there were regulations that would permit my going back in; I did not know that at the time. I did not bring up the Selective Service System. Others told me—presumably, Colonel Sullivan—that there was a way I could continue to serve.

Senator **Metzenbaum**. Well, now we are talking about finding a way to make it possible for you to be able to continue to serve. Is that it?

Mr. **Meese**. That is right. That was a discussion that we had in San Francisco—or in California, at least, if this was the right occasion.

Senator **Metzenbaum**. Well, I am not going to read the quote over again, but it seems to me that it speaks for itself.

Yesterday, you told us that they had inquired of you as to whether you would be interested in this position. The evidence is quite clear today that there was no such position, that the military gets together and creates such a position for you, and it seems to me, Mr. Meese, that one is forced to the conclusion that they could hardly have been talking about coming to you and say, "Do you think we ought to create such a position?" just out of the blue. It just strains the credulity of most people to think that all of a sudden, at a cocktail party, they are aware that you need to get transferred in 7 days, or else, and then the machinery goes to work.

I guess, really, Mr. Meese, what I am saying is that homeowners, the farmers that I talked about yesterday, they did not get special treatment when they were 15 months delinquent. Nobody looked out for them. Other people in the military, nobody gets this kind of treatment. As a matter of fact, there have been letters written in, protesting about it, some written to Congresswoman Schroeder, some to me.

Let me read you one that Congresswoman Schroeder received, from a major, USAR.

"Dear Congresswoman Schroeder, I have just read an article in the current Army Times discussing your intent to pursue the Edwin Meese promotion to reserve colonel.

"Normally, you and I would be on different sides of most issues, and normally, I would support the President in nearly all of his actions, since I have been affiliated with the Republican Party most of my adult life. However, on this issue, I want you to know that I am solidly behind your efforts, and hope that you will be able to obtain the report you are seeking (the IG report), and that not only Mr. Meese, but all of the individuals involved, will be made to answer some very hard questions regarding this promotion.

"I, too, am a reserve officer, and am fully aware of the requirements we all are supposed to meet for promotion, retention, or other considerations. However, to those of us out in the field—in other words, not stationed in or around Washington, DC or St. Louis—this promotion smacked of a 'You scratch my back, and I will scratch yours' action. And the public announcement that there were irregularities, but no one was guilty, smells of coverup.

"Now, the Army Times editorialized on this subject on February 6, 1984, and they concluded by saying, 'The key question is why the extraordinary measures were taken on Meese's behalf. The Senate should be interested in assuring that Meese's actions in the reserve matter were entirely appropriate for a man who would become the nation's top law enforcement officer. There is another reason, "said the Times, 'that the issue is important. The active Army relies more than ever on the reserve components, and it is essential that senior officers in all components be fully qualified and that their promotions be free of any taint of politics or cronyism." '

Mr. Meese, I will go on to another subject——

Senator **Simpson**. Senator Metzenbaum, may I just indicate at this time in the record and report in the record the five general conclusions of the Army inspector general, especially No. 5——

Senator **Metzenbaum**. That was put in yesterday.

Senator **Simpson**. Yes; let me read it.

Senator **Metzenbaum**. Well, they already are in the record.

Senator **Simpson**. I am well aware of that.

Senator **Metzenbaum**. Fine, fine.

Senator **Simpson**. "Mr. Meese was not involved in, nor did he have any knowledge of, any of the administrative procedures followed to return and retain him on active reserve statute."

The report then indicated, "It is emphasized that Mr. Meese was not personally involved in any impropriety in this matter, in the opinion of the investigating officers. Mr. Meese had no knowledge of the procedures and administrative actions taken to return him to an active reserve status.

"Finally, witness' testimony indicated that not only did Mr. Meese not ask for special consideration in his behalf; he specifically requested that he not be accorded such consideration."

There is no question about impropriety. There is no question that it was done wrong. That is what happened. But the nominee had no knowledge of it, according to the records that are before this committee.

Senator **Metzenbaum**. Mr. Chairman, if it meets with your approval, could we have a 5-minute recess?

Senator **Simpson**. Yes, indeed.

The committee will recess for 5 minutes.

[Short recess.]

Senator **Simpson**. The hearing will come to order, please. If we may have your cooperation, we will proceed here, please, and Senator Metzenbaum, you have the floor, sir.

Senator **Metzenbaum**. Mr. Meese, how long have you been acquainted with John McKean?

Mr. **Meese**. John McKean, I believe the first time I met him face-to-face was in June 1981, but I had talked with him on the telephone before that. I may have met him in person once before that, but I do not recall it.

Senator **Metzenbaum**. And in June 1981, you requested a meeting with him, and according to the GAO, you met with him on June 13 and June 17 of that year. Does that sound correct to you?

Mr. **Meese**. That sounds approximately correct, yes, sir.

Senator **Metzenbaum**. That would be his office in San Francisco?

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. Who suggested you meet Mr. McKean?

Mr. **Meese**. He was referred to me by a colleague in the White House for whom he had been an accountant before this gentleman came to the White House.

Senator **Metzenbaum**. That is Mike Deaver?

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. And did he tell you to see Mr. McKean—excuse me. I withdraw the question. You just answered that he did.

Mr. **Meese**. Well, he told me that Mr. McKean was an excellent accountant and financial counselor, and that was a service that I happened to need at that time.

Senator **Metzenbaum**. How long had you known Mr. McKean before you asked him for a loan?

Mr. **Meese**. Well, actually, he suggested the loan at our meeting in June, which was our initial meeting together to work out our financial problems.

Senator **Metzenbaum**. When you first met him, did you know that he was involved in lending money?

Mr. **Meese**. No, I did not.

Senator **Metzenbaum**. Now, according to the GAO report, at the second meeting on June 17, you and Mr. McKean determined that you would need to borrow a total of $60,000, $40,000 initially and $20,000 at a later date.

Can you explain how you arrived at those figures?

Mr. **Meese**. Yes, sir; I gave Mr. McKean a detailed analysis of our family financial situation—all of our obligations, all of our assets, other materials relating to insurance programs, retirement programs, and a variety of other material—and also gave him a projection of our expenditure needs during the course of the next year, which included the tuition for our children who were then going to college and high school, and other anticipated expenses, and he was the one that came up with a projection that showed that we would need up to $60,000 in order to maintain our cash flow during that year.

Senator **Metzenbaum**. And you did, as a result, wind up borrowing the $40,000 and the additional $20,000, and the money was borrowed, and, as I understand it, the note was made payable to "John R. McKean, Trustee."

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. Did you think these were Mr. McKean's personal funds, or was there some explanation as to what the word, "Trustee," meant?

Mr. **Meese**. I believe he explained that these were funds available to his accounting firm for lending purposes.

Senator **Metzenbaum**. Did you ask him whose funds they actually were?

Mr. **Meese**. No, sir; I did not.

Senator **Metzenbaum**. Now, Mr. Meese, I have to ask you, why not? Now, let's think about this for a minute. You are counselor to the President of the United States. You are borrowing $60,000 from a man whom you have only rather recently met. You do not know whose money it is. The money may come from some person or group with respect to which there may be a conflict of interest. It might even be unfriendly foreign sources, it could even be criminal elements. But you are not concerned as to whose money it is, and you do not ask him.

Is that right?

Mr. **Meese**. Senator, I had knowledge of Mr. McKean; he was recommended by Mr. Deaver, in whom I have a great deal of confidence. I looked at his background, information; he was an eminent accountant in San Francisco. I had full confidence in him and in what I had learned about him from Mr. Deaver, and I believe he was recommended by others to Mr. Deaver. All of that certainly assured me that he was a reputable person. In fact, that has proven to be true. He is an eminently reputable person, and my judgment was confirmed.

Senator **Metzenbaum**. I am not questioning whether or not Mr. McKean is a reputable person. But accountants represent all kinds of people, just as lawyers do. And it seems to me that a man who is counselor to the President, or Attorney General, would have some obligation, or would be pretty hardput not to want to know to whom he was indebted. You did not think that that was important?

Mr. **Meese**. Yes; I did; I was indebted to only one person. That was John R. McKean, Trustee.

Senator **Metzenbaum**. Yes, and if the beneficiaries of the trust called the loan, put some pressure on you—after all, one of the things creditors do is they put pressure on debtors—and the money could have come from any kind of a source, and to this day, it still does not bother you as to what the source of those funds were; is that right?

Mr. **Meese**. I had confidence in Mr. McKean as the trustee and still have confidence in him, Senator.

He was the only one with whom I did business.

Senator **Metzenbaum**. What if somebody was undergoing a state or a Federal investigation and Mr. McKean did not know about it. And it turned up that you, as the counselor to the President, had become obligated for $60,000, somebody in that position. Now, you talked a little bit ago about wanting to avoid publicity. Wouldn't you be concerned that that would bring all sorts of untoward publicity, and wouldn't there be less than the kind of proper care being taken, due care, by the counselor to the President or the Attorney General?

Mr. **Meese**. No, sir, Senator. I had confidence that the funds were properly acquired by Mr. McKean, and he was the only one with whom I did business.

Senator **Metzenbaum**. Well, the GAO attempted to find out—I am not sure if they did—I guess they did—but they were assured by Mr. McKean's partner that people conduct no business with the Federal Government. But there could be other kinds of conflicts of interest or areas of impropriety, and that still would not bother you? You were satisfied—you met Mr. McKean in June 1981; Mike Deaver recommends him to you. That is all you know about him. And then you go ahead and you borrow money from him, and you have no worry about what the source is. Right?

Mr. **Meese**. Again, as I say, I did business with Mr. McKean, and I had confidence in him.

Senator **Metzenbaum**. Now, as I understand it, you were to pay 21 percent interest for the first 3 months on this loan, and then you were to pay the greater of 18 percent of the prime rate at the Bank of America.

Is that correct?

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. You were to pay the interest not less than annually; is that correct?

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. And then, about 6 months later, in December 1981, you already had the $40,000; from June 1981, you borrowed the additional $20,000 from Mr. McKean, in the same role, from that investment pool, and the check was made payable to the trustee. Right?

Mr. **Meese**. The check was made payable by Mr. McKean, the trustee.

Senator **Metzenbaum**. Excuse me. I mean the note was made payable to——

Mr. MEESE. The note was made payable to him as trustee, yes, sir.

Senator METZENBAUM. Now, then, the first loan was made in June 1981; the second one was made in December 1982. How much interest did you pay in 1981?

Mr. MEESE. None, and none was due.

Senator METZENBAUM. And how much interest did you pay in 1982?

Mr. MEESE. None, because we made arrangements to pay it off at a later time.

Senator METZENBAUM. How much interest did you pay Mr. McKean in 1983?

Mr. MEESE. In 1983, I believe I paid $20,100.

Senator METZENBAUM. You paid $100 first, didn't you, Mr. McKean?

Mr. MEESE. $100 first. My name is Meese.

Senator METZENBAUM. And you paid the $100 on August 20, 1983, 2 years and 2 months after you first made the first loan.

Mr. MEESE. I paid $100 in August, and I paid the balance of $20,000 in interest on, I believe, the 15th of September, when I paid off the total amount of the loan.

Senator METZENBAUM. Now, you did not pay any money for 2 years and 2 months, until after the Washington Post addressed itself to this subject, did you?

Mr. MEESE. I paid off on the dates that I stated. It had nothing to do with the Washington——

Senator METZENBAUM. No, now, that is not what I am asking you——

Mr. MEESE. It had nothing to do with the Washington Post.

Senator METZENBAUM. I am not asking you whether it had to do with the Washington Post or not. I am asking you whether or not it is not the fact that you had paid no interest until this matter was first made a public issue by the Washington Post, and then you paid $100, in August 1983.

Mr. MEESE. There is no relationship, sir, to the Washington Post.

Senator METZENBAUM. I am not asking you that question. Just answer my question. I am not asking you whether there is a relationship or not. I just want the facts.

Senator SIMPSON. Let the nominee respond.

Senator METZENBAUM. Well, I was just asking him to respond to my question.

Senator SIMPSON. Yes, well, he can't do that when you are asking him another one.

Mr. MEESE. Senator, I paid the amounts of interest of $100 in August and $20,000 in September. I honestly do not know when the Washington Post articles came out.

Senator METZENBAUM. Well, if I told you that it was July 23, 1983, would that refresh your recollection?

Mr. MEESE. No. I still do not remember when they came out, but I would take your word for it.

Senator METZENBAUM. The facts are that you first made a $100 payment 26 months after you first made the loan, after the matter had been made a matter of newspaper publicity.

Now, Mr. Meese, I will get back to the details of the loan in a minute. But right now, I would like to turn to the question of Mr. McKean's appointment to the Postal Service Board of Governors.

According to the GAO Report, Mr. McKean was recommended for this post at a meeting of the senior personnel panel.

Who comprised that panel?

Mr. **Meese**. Well, it is actually the staff review committee. It is Mr Baker, Mr. Deaver, and myself, and we meet with the head of Presidential Personnel and usually one or two members of his staff.

Senator **Metzenbaum**. That is Pendleton James?

Mr. **Meese**. It was at that time, if you are referring to 1981, yes, sir.

Senator **Metzenbaum**. And that panel is to act on recommendations that have already been processed by the Office of Presidential Personnel; is that correct?

Mr. **Meese**. That is correct.

Senator **Metzenbaum**. Now, you have been associated with Mr. Deaver going back to the days of your service under Governor Reagan in California; is that true?

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. And that goes back to about 1968?

Mr. **Meese**. Well, probably even before that; 1967.

Senator **Metzenbaum**. And you and Mr. James have been personal friends for more than 30 years?

Mr. **Meese**. That would be approximately correct, yes.

Senator **Metzenbaum**. That is good enough.

And we all know from reading the papers how close you are to Jim Baker.

So that was the four of you there.

The GAO says that a list of candidates for this position was prepared on July 13, 18 days before the meeting, and Mr. McKean's name was not on it.

Now, I would like to read you what you said—first of all, let me ask you who suggested that Mr. McKean be named?

Mr. **Meese**. That was Michael Deaver.

Senator **Metzenbaum**. And would you describe to the best of your recollection what transpired at that meeting; when did Mr. Deaver bring it up, and did you participate in the discussion?

Mr. **Meese**. This was, I believe, a meeting on the 21st of July, according to the GAO report——.

Senator **Metzenbaum**. July 31, was it?

Mr. **Meese**. The 21st, I believe, according to the GAO report, if that is the correct meeting.

In any event, it was the meeting of the staff personnel review committee. The Presidential Personnel Office had brought to us some names for discussion, because they were concerned about who would be a good person to have on the Postal Service Board of Governors. It was a very key appointment, and as they often do when they have a number of possibilities but have not really settled on someone or are not satisfied with the list they have, it was presented as a discussion item at that meeting agenda, because they were looking for our guidance as to possible people for this important post.

They were looking for a businessman or a businesswoman, someone with a business background, who would be in accord with the President's approach that there ought to be more businesslike methods brought to Government.

It was in the context of that conversation that Mike Deaver mentioned that he knew someone who would be very good and referred, then, to Mr. McKean.

Senator METZENBAUM. Now, was Mr. McKean's name on the list that was submitted at that meeting?

Mr. MEESE. No, sir, it was not.

Senator METZENBAUM. And the GAO says that:

> Mr. Pendleton James, Director of Presidential Personnel at the time, stated that Mr. Deaver recommended Mr. McKean for the position during a regular meeting of the Senior Personnel Panel, on July 31, 1981. According to Mr. James, when Mr. Deaver suggested that Mr. McKean's name be submitted to the President, the other panel members agreed.
>
> While the panel ordinarily acted upon recommendations that had been processed through the Office of Presidential Personnel, we were advised that it was not unusual for a recommendation to be initiated and acted upon at a panel meeting.

Now, how do you reconcile that with your statement under oath yesterday where you say:

> Some weeks later, the name of John R. McKean came back to the staff review committee as their recommended nominee to the President. It went through us and was ultimately presented to the President and was approved by him, and he did appoint John McKean. It was not my suggestion that John McKean be appointed.

Now, what are the facts?

Mr. MEESE. Senator, that is my recollection, that the name was given to Pen James and that he went back through Presidential Personnel; they did an investigation of Mr. McKean, and that that matter then came back through us on the way to the President for his ultimate approval, and I believe it was some weeks later when that happened.

Senator METZENBAUM. Well, was James misstating the facts when he advised the GAO that, "when Mr. Deaver suggested Mr. McKean's name be submitted to the President, the other panel members agreed"? There is nothing about a couple-week delay, or checking him out, or anything.

Mr. MEESE. I am sure he was checked out, Senator. That is my recollection.

Senator METZENBAUM. Did you have anything at all to do with Mr. McKean's being appointed to this position?

Mr. MEESE. Nothing other than concurring in Mr. Deaver's judgment that he was a good man.

Senator METZENBAUM. Well, how do you account for the fact that Mr. McKean, in the hearing before the Committee on Governmental Affairs of the U.S. Senate, was asked on selection: "Do you know why you were chosen for this nomination by the President?"

Answer: "Members of the administration, namely, Mr. Michael Deaver and Mr. Edwin Meese, were aware of my background, and it is my understanding that my name was submitted to the President for nomination by these parties."

Now, Pendleton James tells one story, and you give us a little different story.

Mr. McKean says he owes his position to you and to Mr. Deaver. You say that you just were somebody who went along for the ride. Now, what are the facts?

Mr. **Meese**. No, sir. I said that I concurred in Mr. Deaver's judgment that Mr. McKean would be an excellent candidate for that position. There was no doubt about my position on that.

Senator **Metzenbaum**. Well, you were one of the persons who were instrumental in getting Mr. McKean the position, weren't you?

Mr. **Meese**. You could describe it that way, although actually, it was his own qualifications that got him the position.

Senator **Metzenbaum**. Let me ask you, did you reveal to the others on the panel that only a month prior to this recommendation, Mr. McKean had loaned you $40,000 and, in fact, had promised you another $20,000?

Mr. **Meese**. Mr. McKean had acted as trustee for the loan. I do not believe it came up during that discussion, although it may have been known to Mr. Deaver—I am not sure.

Senator **Metzenbaum**. But you did not bring it up?

Mr. **Meese**. I did not bring it up, no, sir.

Senator **Metzenbaum**. Why not, Mr. Meese? Don't you think it was pertinent information concerning a Presidential appointee in connection with which you were going to be a major factor as to whether he was or was not to be appointed?

Mr. **Meese**. Senator, the idea that there was any connection between the loan and the recommendation of Mr. Deaver of Mr. McKean was so far from my thoughts that it never even occurred to me.

Senator **Metzenbaum**. I am not suggesting that there was a cause and effect. I am suggesting, however, that it certainly provides for the appearance of a connection when somebody who owes another individual $60,000, or 40 plus 20 coming, does not pay any interest on that loan for 2 years, and is instrumental in seeing that that person is appointed to a high Government position—there may be no impropriety at all, but it certainly would cause many Americans and many people to wonder: How did that happen? Was that just coincidence, also?

Mr. **Meese**. I do not see it as a coincidence. The idea that it had any connection was the farthest thing from any thought that I would have, and so it never even occurred to me.

Senator **Metzenbaum**. Mr. Fred Fielding, as I understand it, is the designated ethics official for the White House. When did you reveal the loan to him?

Mr. **Meese**. I imagine it was whenever I filed my next Government Ethics Form.

Senator **Metzenbaum**. The appointment was approved and forwarded to the President. Did you inform the President of your financial arrangements with Mr. McKean?

Mr. **Meese**. No, sir, I do not believe I did.

Senator **Metzenbaum**. The GAO reports that:

> Mr. Deaver did contact Mr. McKean that same month, August of 1981, for tax advice concerning an unexpected large tax liability. This resulted in Mr. McKean arranging a tax shelter for Mr. Deaver by setting up a $58,000 loan for Mrs. Deaver to buy a truck from a firm partially owned by McKean. The note was signed on

October 17, 1981. One month later, on November 4, 1981, the President nominated McKean to the post.

Were you aware of Deaver's transactions with McKean, and were they brought to the attention of your panel?

Mr. **Meese**. They were not brought to the attention of the review committee. I may have been aware. I may have discussed generally the financial transaction with Mr. Deaver, but I was not aware of any of the details, no, sir.

Senator **Metzenbaum**. Now, Mr Meese, there are four members of a panel meeting. Two of them have financial dealings with a man whose name is not on the list that is submitted. One of them who has these financial dealings brings up the name; the other one concurs, and the two who do not have any financial dealings go along, and the man receives the Presidential appointment.

Don't you think that the President was entitled to know about that? Don't you think that it was a matter that should have been disclosed to the other two members of the panel?

Mr. **Meese**. Senator, there were a couple of intervening steps. The entire candidacy of Mr. McKean was thoroughly investigated by the Presidential Personnel Office, and they were satisfied that he was the right nominee before it went to the President.

Senator **Metzenbaum**. Mr. Meese, I am not asking if they were satisfied. You are here before us to be appointed Attorney General of the United States. It is a question of sometimes people disclose facts or fail to disclose facts in a manner in which it relates to their own character. In this instance, you say you may have known of Deaver's loan; you certainly knew of yours. You knew that you were passing upon the appointment of an individual who was not on the list submitted to you. And your sense of propriety did not suggest to you at all that you should disclose the fact that you had that financial relationship, or maybe even more properly, recuse yourself from those deliberations?

Mr. **Meese**. Senator, the idea that there would be any connection or relationship between Mr. McKean being my accountant and a trustee in a financial transaction and the appointment was so far from my consciousness that I would not even think of it.

Senator **Metzenbaum**. Mr. McKean was confirmed by the Senate on March 8, 1982, to a term ending in 1986. He told the GAO that he began thinking about a longer term in the summer of 1982—that would be about 3 months later—and was aware of a full 9-year term coming up at the end of 1982. The GAO says that he raised the issue in separate discussions with both you and Mr. Deaver.

When and how did he raise it with you?

Mr. **Meese**. If I remember correctly, we had a meeting—we frequently met when he came back for Board meetings of the Postal Board of Governors, and we sometimes discussed postal matters, inasmuch as I had a great interest and, one of my responsibilities in the White House was to maintain liaison and keep in touch with what was going on in the various departments and agencies of the Government.

I believe he mentioned at one of those meetings that there was a lot to be done in the Postal Department, and that it would require more Reagan appointees before some of the things could be done. It was in that context that—because it was already indicated that he would probably be reappointed—he mentioned that there was a longer term, which would provide the opportunity to do a better job on revamping the management structure of the Board of Governors of the postal system.

Senator METZENBAUM. So he did bring it up to you, and you then recommended him for the longer term?

Mr. MEESE. I believe when it came up at one of the personnel meetings later on, that I certainly believed it was the right thing to do.

Senator SIMPSON. Excuse me, Senator Metzenbaum.

The Chairman has returned, and if I may, I had two questions I would ask—well, I will ask them while I am still chairman, and that will make it a lot easier——

[Laughter.]

Senator SIMPSON. I want to ask you about the——

Senator METZENBAUM Mr. Chairman, I would ask unanimous consent that your line of inquiry at this point be included at the conclusion of my inquiry.

Senator SIMPSON. Certainly. Without objection, so ordered.

It would go in the area of the question and the inquiry with regard to the loans on your real estate transactions.

As succinctly as I can, did you ever make a nickel?

Mr MEESE. On the transactions?

Senator SIMPSON. Yes.

Mr. MEESE. Do you mean in the sense of the selling of the house?

Senator SIMPSON. In the whole transaction—the tangled web, the apparent attempts to portray a manipulation of the webs and threads of mysterious power, did you ever make a buck?

Mr. MEESE. Senator, if I understand your question correctly, in the sale of my home in San Diego, there was a small profit made on the sale after paying off all the loans, but in terms of making any money on the total transactions, I paid interest, obviously.

Senator SIMPSON. Of about $42,000 or $43,000.

Mr. MEESE. I paid, I believe, in excess of $43,000 in interest on the various loans on the San Diego property over a period of about the 20 months or so that I had those loans.

Senator SIMPSON. Well, in these various allegations and the questioning, it would seem that you had profited handsomely somewhere along the line with your prowess and your powers. And I, personally, in my review of all of the records, have been unable to find out where that is. It is not there, is it, other than what you just related about that sale?

Mr. MEESE. No, sir; there is no profit, as I say, and on the other loan, of course, I paid—the loans to Mr. McKean as trustee—I paid something in the neighborhood of over $23,000 of interest.

Senator HATCH. Is that in addition to the $42,000 that you paid?

Mr. MEESE. Yes, sir.

Senator HATCH. In other words, you paid about $65,000 that you would not have had to pay if you not taken this job with the Federal Government?

Mr. MEESE. That is correct.

Senator HATCH. And if you had not been willing to come to Washington and serve here?

Mr. MEESE. That is correct.

Senator Hatch. And in addition to that, if I understand correctly you had to pay all of your moving expenses as well.

Mr. Meese. That is right.

Senator Hatch. And all of the costs of bringing your family back here, as well.

Mr. Meese. Yes, Senator.

Senator Hatch. And that all this came out of your own pocket?

Mr. Meese. Yes, sir.

Senator Hatch. You are not a wealthy man, are you, Mr. Meese?

Mr. Meese. No, sir; I think that is clear.

Senator Hatch. You know, I think it is a refreshing thing—I think it is a refreshing thing to have people like you willing to serve in Washington, who are not millionaires like so many here in the Senate, for example. [Applause.]

Senator Metzenbaum. I did not hear what Senator Hatch was saying.

Senator Hatch. Let me say it again.

Senator Mathias. Well, I think there ought to be no demonstrations, however, regardless of what any member of this committee says.

Senator Hatch. That is right.

Senator Simpson. Yes; that is correct. The persons in this hearing room shall not respond in that fashion again, please.

Senator Hatch. Well, then, if I could say it again.

I do find it very refreshing that an attorney, who is clearly capable of earning a great amount of money on the outside, has been willing to come back here, pay his own transportation costs, his own moving costs, lose over $65,000 in addition to those costs because of the inconvenience of serving his country and his President, to come back here and work, when it is so easy for so many of us who sit in the U.S. Senate to criticize.

Now, I personally want to compliment you for that; I think it is about time that it be brought up. A lot of people serve back here who have to pay their own way, who are not wealthy, who can provide great service, who do give great service, who never get any credit for it, and then when they go through some difficulties such as you, they get criticized for it.

I think it is time to stop the criticism. If there are any facts that can be used against you to show that you acted improperly or otherwise inadvisably or illegally, I would like those facts brought out.

Senator Metzenbaum. May I continue on?

The Chairman. The Senator from Ohio has the floor.

Senator Metzenbaum. Mr. Meese, on July 23, 1983, Charles Babcock of the Washington Post first made public the fact that you and Mr. Deaver had received $118,000 in loans from Mr. McKean. In an interview with Mr. McKean as part of that article, Babcock quotes Mr. McKean as saying that you were doing all right on paying the interest.

At that point, July 13, 1983, you had not actually paid any interest, had you, Mr. Meese?

Mr. Meese. No, sir.

Senator Metzenbaum. Do you consider paying nothing as "doing all right"—or, how did Mr. McKean get the information to be able to say publicly—how did Mr. McKean arrive at the conclusion that you were doing all right as far as paying the interest when you have not paid anything—but I guess I will withdraw that question, because——

Mr. **Meese**. I would be glad to answer it. I think Mr. McKean understood and reflected in his comment to a newsman that he was satisfied with the interest arrangements, because we had arranged to pay the interest at the time that we paid off the loan, because we expected to do that from the sale of the home.

Senator **Metzenbaum**. Well, later, in the Post, Fred Fielding was quoted as saying the interest was paid in timely fashion. Now, this was July 1983, and nothing had been paid at that time. Did you tell Mr. Fielding that?

Mr. **Meese**. No, sir.

Senator **Metzenbaum**. According to the GAO report, you met with Mr. McKean in his office on August 23, 1983, and paid $100 of $20,100 in interest, and signed a new note for $80,000.

Is that right?

Mr. **Meese**. That is correct.

Senator **Metzenbaum**. Now, until Wednesday, Mr. Meese, we had no documentary backup whatsoever on these loans. On Wednesday morning at 9 a.m., we were finally provided with some documentation, and I find myself in the position of now having to ask more questions simply because your answers only raise more questions.

First, your statements to the GAO. Combined with your previous testimony to this committee, and Mr. McKean's statements to GAO, all agree on one thing, and that is that the total payment of either principal or interest on the two loans between June 25, 1981, and August 20, 1983, amounted to $100, which you paid in Mr. McKean's office on August 20, 1983. I think you have already indicated you agree with that conclusion.

Mr. **Meese**. I am sorry. I did not get the dates. I paid $100 in August, and I believe that was the same time that I paid the other $20,000 in interest by having it added to the note.

Senator **Metzenbaum**. Well, you did not pay anything at that time; you just increased the note size.

Mr. **Meese**. Right. But I satisfied the interest demand by paying on the note.

Senator **Metzenbaum**. All right. But as far as cash out of your pocket, you paid $100 up until that point?

Mr. **Meese**. Right. That was so we would have an even round number for the note of $80,000.

Senator **Metzenbaum**. All right.

Mr. **Meese**. At that time, then, the interest was current.

Senator **Metzenbaum**. All right. However, among the documents you submitted Wednesday was the following, and I am confused. It is a copy of a handwritten letter to Mr. McKean, dated December 30, 1981, which reads as follows:

"Dear John, enclosed is my check in the amount of $2,300 in payment of interest on the loan of $40,000 provided through your efforts.

"Thank you for your assistance in all our endeavors, and best wishes for a happy new year.

"Sincerely."

And xeroxed underneath that letter is the copy of the face of a check made out to Mr. McKean, in the amount of $2,300.

Now, that is December 30, 1981. Also included is is an envelope addressed to Mr. McKean and postmarked January 2, 1982.

First of all, I do not understand, since that letter was delivered to Mr. McKean, how do you happen to have the envelope and the check, as well?

Mr. **Meese**. Senator, I wrote that check. I was going to pay the interest and did pay the interest that was due at the end of 1981 I mailed that, I believe, before the 31st of December. Apparently, it was not picked up and postmarked until the 2nd of January. Mr. McKean received it and called me about it and said that he thought it would be better not to have any interest paid in 1981 because I had ample deductions, based upon his figures, for that year, and that it would be better to hold over the interest until a later time when I could use the interest deduction.

Senator **Metzenbaum**. Well, there would not be any problem about that, since it was postmarked January 2, 1982 and actually was not received by Mr. McKean until sometime in 1982. So that it would not have even been possible to deduct it in 1981 to conform to the law.

Mr. **Meese**. Well, I believe, according to the law, it is when you deposit the check in the Post Office that constitutes the date on which the payment is complete.

Senator **Metzenbaum**. It was postmarked January 2, 1982.

Mr. **Meese**. That is what I say, it was not postmarked, but I am sure I deposited it before the 31st or on the 31st.

In any event, Mr. McKean returned the check to me, and that is why it was in my possession, and that is why we had made the arrangements to pay the interest later on.

Senator **Metzenbaum**. Now, the next communication you submitted is a letter to you from Mr. McKean dated June 4, 1982. It reads:

"Dear Ed, By the time you receive this, I hope we will have discussed the note herein as well as the 1981 tax status. As we have planned, I placed the call to you on Saturday, June 5, 1982.

"Very truly yours, John McKean."

Now, the letter is dated June 4. He says he placed a call to you on June 4.

Tell me about that. And he says something about the fact that they discussed your tax status.

What is this letter all about?

Mr. **Meese**. I have no recollection.

Senator **Metzenbaum**. Well, I think we got this letter from you.

Mr. **Meese**. I am sure. The committee requested——

Senator **Metzenbaum**. Or, it may have come from McKean. I am not sure.

Mr. **Meese**. The committee requested all documents in my possession, and all documents that I had I gave to the committee.

Senator **Metzenbaum**. Now, then, you apply for a new loan at American Home Funding. Can you tell me the circumstances of that application?

Mr. **Meese**. Yes, Senator; in August 1983, because we knew that we would not be able to pay back the loan out of the proceeds of our home sale, which had taken place the year before, we agreed when we got together with Mr. McKean that I would take the note as a second mortgage on my home in Virginia. So we applied—he knew of this particular firm—and we received the necessary papers. We had communicated by telephone before that time. I was in California on that particular date, and we got together. At that time, we signed the necessary documents to apply for a second deed of trust on our home in McLean through this particular company.

I also told him at the time that we would look around in Washington and see if we could find financing through banks or savings and loans there.

Senator **Metzenbaum**. Now, was there some reason that this was to be handled in a very confidential manner?

Mr. **Meese**. No more than anything else. I think, as you pointed out, there had been ample publicity up until that time, and there was no desire to generate any more.

Senator **Metzenbaum**. But it was to be an up-and-up loan, a legitimate loan with a regular banking institution—is it a banking institution?

Mr. **Meese**. I believe it was, or a savings and loan. All of these have been, Senator.

Senator **Metzenbaum**. Pardon?

Mr. **Meese**. All of these transactions have been.

Senator **Metzenbaum**. Well, all except the McKean loan.

Mr. **Meese**. Well, that was on the up-and-up, also.

Senator **Metzenbaum**. I am not saying they are not up-and-up. I was not questioning that.

Now, then, after you went all through the trouble of applying for that loan and telling the GAO that the loan was being made, you then withdrew the application or did not finalize the matter.

Can you tell us the circumstances?

Mr. **Meese**. Yes, sir. We also looked around in Washington and found that we could obtain a loan and ultimately, a second deed of trust on our property, through the National Bank of Commerce here in Washington.

Senator **Metzenbaum**. And do you have a second deed of trust on your property to the National Bank and Trust?

Mr. **Meese**. It is in the process of being placed there. I believe it becomes effective the 15th of March or thereabouts.

Senator **Metzenbaum**. And you have received the money already?

Mr. **Meese**. The money was received when we got the original loan, I believe on September 14, 1983, and that was a check which we, I believe, directly transmitted to Mr. McKean as trustee to pay off the $80,000 worth of loans and interest that we owed to him.

Senator **Metzenbaum**. Now, Mr. Meese, as you well know, I have some further questions of Mr. McKean, Mr. Howard, and Mr. Barrack, and we will get into those further when Mr. McKean and Mr. Barrack is here, and when Mr. Meyers goes out to inquire of Mr. Howard tomorrow.

But I would like to change the subject on you from your own financial matters to some Government matters.

In the summer of 1981, the administration was debating the future of three synthetic fuels projects, including the Union Oil Co.'s Parachute Creek oil shale plant.

Did you get involved in this policy debate?

Mr. **Meese**. I do not have any recollection, Senator, but I am sure I probably did, because I was involved in most policy matters of the administration, if it was a matter that pertained to the Cabinet in which the White House was involved.

Senator **Metzenbaum**. Now, as I understand it, one of the issues is whether the Union Oil project should receive $400 million in Federal assistance.

I also understand that you vigorously supported that position.

Is that true?

Mr. **Meese**. I do not have any recollection of vigorously supporting that position.

Senator **Metzenbaum**. Would you have any documents in connection with this matter in your files?

Mr. **Meese**. Not to my knowledge.

Senator **Metzenbaum**. Would you be good enough to search your files and advise us as of Monday as to whether either you have them, and make them available, and if not, that you do not have them.

Mr. **Meese**. What is the specific transaction?

Senator **Metzenbaum**. It has to do with the Union Oil Co.'s Parachute Creek oil shale plant and three synthetic fuel projects.

Mr. **Meese**. All right.

Senator **Metzenbaum**. I wanted to ask you—well, let me ask you this. Do you have any recollection of having had any conversations with Mr. Fred Hartley, chairman of the board of Union Oil Co., concerning this or other matters?

Mr. **Meese**. I have had conversations with Mr. Hartley over the years on occasion. I do not have any recollection of discussing this with him.

Senator **Metzenbaum**. What were the nature of the conversations that you have had with him? I am not talking about social conversations. I mean conversations having to do with Government policy or administrative actions or whatever.

Mr. **Meese**. I do not recall any conversations of that nature.

Senator **Metzenbaum**. To the best of your recollection, you have only had conversations with him just concerning social matters?

Mr. **Meese**. I believe he called me at one time because he wanted to obtain the President to speak to some petroleum association, or something along that line. But that would be the nature of the——

Senator **Metzenbaum**. That is sort of social.

Mr. **Meese**. Well, that was an official request to speak, but it was that kind of thing. I do not remember anything beyond that at the present time.

Senator **Metzenbaum**. Let me ask you whether you met with Edward Noble, Chairman of the Synthetic Fuels Corporation, as well as Department of Energy officials, on the Great Plains coal gassification project.

Mr. **Meese**. Yes, I do remember conducting one meeting on that subject.

Senator **Metzenbaum**. Tell me the circumstances surrounding that meeting.

Mr. **Meese**. I believe at that time there were positions taken at the Synthetic Fuels Corporation and the Department of Energy, and the question was whether the Department of Energy would transfer a project over to the Synthetic Fuels Corporation, as provided by law.

As I remember, Mr. Noble requested that I convene a meeting to coordinate that matter, which was my usual role in the White House, and I did conduct such a meeting. During the meeting, primarily Mr. Hodel, the Secretary of Energy, and Mr. Noble, the Chairman of the Synfuels Corporation, worked out the details in front of the group that was assembled there, and I really had very little to say at the meeting itself, other than to convene it.

Senator **Metzenbaum**. Do you know which companies were represented at that meeting?

Mr. **Meese**. I do not believe any companies were represented at that meeting. I think it was just the two Departments and various other governmental officials.

Senator **Metzenbaum**. Energy Daily reported on November 14, 1983 that you instructed Mr. Noble and the SFC to "make sure that the project did not collapse."

Is that accurate?

Mr. **Meese**. I do not believe I ever instructed Mr. Noble to that effect at all, and I believe he has testified to the contrary.

Senator **Metzenbaum**. Well, is it not the fact that the SFC had actually reached its conclusion not to further aid the project, but that after the meeting in the White House, they reversed their position?

Mr. **Meese**. I do not know whether they did or not. I do not believe that is the case.

Senator **Metzenbaum**. Is it not the fact that after the White House meeting, the Synthetic Fuels Corporation did in fact change their position?

Mr. **Meese**. Yes; Mr. Hodel and Mr. Noble came to at a meeting of the minds that that should happen, and that, to the best of my knowledge, did go forward.

Senator **Metzenbaum**. Why was the meeting in the White House, since the Congress set up the SFC as an independent corporation and took great pains to make sure that it was insulated from political pressure. Then you call a meeting in the White House with the head of the Department of Energy and the head of the SFC—and whether or not oil company representatives were there, you do not recollect, and I am not certain—and the bottom line is that the position is then reversed.

Isn't that exactly contrary to the intent of Congress in attempting to establish the independence of the SFC?

Mr. **Meese**. No, sir.

Senator **Metzenbaum**. Well, how would you interpret that?

Mr. **Meese**. Well, first of all, the meeting was requested by the Chairman of the Synthetic Fuels Corporation to work out and coordinate some details with the Department of Energy.

Second, there were no oil company representatives there, to the best of my recollection, and I think that is accurate.

Third, the discussion was between the two people who were involved.

Fourth, there were no political considerations or political influence brought to bear at all.

And finally, that was part of my role as a Government official, to bring together agencies of the Government where coordination was needed.

Senator METZENBAUM. Well, by your calling the meeting in the White House, were you in fact not putting pressure upon the SFC to reverse its position?

Mr. MEESE. Not at all.

Senator METZENBAUM. And you do not think that in any way, when the President's counselor calls a meeting of an independent agency that Congress has established, that that violates the independence which Congress contemplated the agency would have?

Mr. MEESE. I called the meeting at the request of the chairman of the agency itself.

Senator METZENBAUM. Mr. Meese, Arthur Van Court is a U.S. marshal in Sacramento. How long have you known Mr. Van Court?

Mr. MEESE. As I testified yesterday, I first met Mr. Van Court in 1967, when I joined the staff of the Reagan administration in Sacramento.

Senator METZENBAUM. What was his position in the Reagan administration?

Mr. MEESE. He was the travel secretary for the Governor.

Senator METZENBAUM. Was he a bodyguard and a security person, as well?

Mr. MEESE. He also had responsibility for a while, during part of the time he was travel secretary, for security, yes.

Senator METZENBAUM. And he is a former Los Angeles detective?

Mr. MEESE. He was a Los Angeles police officer. I do not know what position he held there.

Senator METZENBAUM. Now, when you first joined Governor Reagan's staff, you were put in charge of extraditions and clemency, is that correct?

Mr. MEESE. Yes, sir.

Senator METZENBAUM. Would you characterize yourself as being in the inner circle at that time, that is, early 1967?

Mr. MEESE. I am not sure there was an inner circle or otherwise. I was a member of the Governor's staff and was one of eight persons who might be called the principal secretaries to the Governor.

Senator METZENBAUM. Well, in early 1967, there was an incident that has been reported in the media that ended up in the resignation of several top officials in Governor Reagan's administration. I am not concerned about the details of the alleged incident, except to ask some questions about the end results.

According to media reports, especially to a section in Lou Cannon's 1982 book, "Reagan," the rumors of the alleged incident led to an internal investigation being mounted. As reported by Mr. Cannon, a group including Lyn Nofziger, William Clarke, and yourself was involved, and Mr. Van Court headed the alleged investigation.

Would you comment on these reports?

Mr. **Meese**. Well, there were a series of incidents at that time in which members of the Governor's staff did converse with each other about some of the things that were happening on the Governor's staff. As far as an investigation, I do not know whether you could actually characterize it as that.

Senator **Metzenbaum**. By the way, you are accorded a nice thank you in the foreword of Cannon's book. Can we assume that you were, in fact, a source for the book and were interviewed on one or more occasions by Mr. Cannon?

Mr. **Meese**. That is correct. I do not know that he ever interviewed me on that particular subject, however.

Sentor **Metzenbaum**. Now, at some point later in 1967, some members of the Governor's staff resigned, and the media reports linked the resignations to the previously mentioned incident and investigation.

Would you confirm that those were, within limits, the rough circumstances of what occurred?

Mr. **Meese**. Well, I do know that people resigned from the Governor's office, yes.

Senator **Metzenbaum**. Now, I believe that around this time, you moved to the extradition and clemency post as secretary of legal affairs; is that right?

Mr. **Meese**. There was a reorganization of the Governor's office at that time, and I was named legal affairs secretary. The extradition and clemency functions were a part of the legal affairs secretary's office.

Senator **Metzenbaum**. And in 1978, when William Clarke was appointed a judge, you moved up to chief of staff or executive secretary to the Governor; is that correct?

Mr. **Meese**. That was 1969, when I became executive assistant and chief of staff.

Senator **Metzenbaum**. I am sorry.

Mr. **Meese**. I was named in 1968 and actually took office in February of 1969.

Senator **Metzenbaum**. I am sorry. We were wrong.

Mr. Van Court was nominated as U.S. marshal by President Nixon in the early seventies and served until President Carter came to office. In 1982, the President again appointed him as U.S. marshal in Sacramento.

Is that correct, to the best of your knowledge?

Mr. **Meese**. Yes, sir.

Senator **Metzenbaum**. I have here a copy of an article from the Sacramento Bee of July 25, 1982. The headlines read: "FBI Probes Pick for U.S. Marshal; Reagan Administration Choice for Sacramento in Doubt." And then, there is a picture of Mr. Van Court. "Arthur Van Court says he has been cleared by two Federal Grand Juries."

The article reads:

> The Reagan Administration's choice for U.S. Marshal in Sacramento, Arthur Van Court, is under an FBI investigation into his relationship with a convicted con man who has ties with organized crime. Justice Department officials are expected to recommend that the White House not appoint to the post President Reagan's former bodyguard and investigator.
>
> Federal court records indicate Van Court has been under investigation by the FBI since 1978, the year after he gave up the Marshal's post to Robert LaRoche, a

Jimmy Carter appointee. Despite the investigation, Van Court has remained a friend of his former boss, having flown from Florida to the Reagan ranch in California last spring, after being invited to attend the President's annual picnic.

A government official in Washington, D.C. said last week that Van Court's nomination is in deep trouble. The official said that those responsible for clearing potential appointees for Justice Department positions will meet within the next few days and probably recommend that Van Court's name be removed from consideration.

Let me ask you, did you have any role in the appointment or confirmation of Mr. Van Court to the position of U.S. marshal?

Mr. **MEESE**. I was a member of the judicial selection process in the White House through which Art Van Court's name was considered and went through as a recommendation to the President.

Senator **METZENBAUM**. Did you have any discussions with the FBI about Mr. Van Court?

Mr. **MEESE**. I did not, personally. I know that we did receive a report from others in the Justice Department that they had had such discussions.

Senator **METZENBAUM**. And Mr. Van Court was finally appointed to that position.

Mr. **MEESE**. After he had been given a clean bill of health through the Justice Department investigation, yes, sir.

Senator **METZENBAUM**. And was that with your approval?

Mr. **MEESE**. I was one of those who approved it, I think, in this case, because there had been some question of perhaps what you just referred to in the Sacramento Bee article. We had a second cut at the review of the investigation or perhaps a second investigation; I remember something to that effect. But I do know it was very carefully scrutinized to be sure that there was absolutely no reason why the recommendation should not go forward to the President.

Senator **METZENBAUM**. Were there any objections from the FBI?

Mr. **MEESE**. Not to my knowledge, no, sir.

Senator **METZENBAUM**. Now, Mr. Meese, there have already been some questions, and the name of Sheriff John Duffy of San Diego has been mentioned in connection with the President's Commission on Organized Crime. However, I have a few more.

I believe you had previously testified that you in fact were the one who had recommended Sheriff Duffy's name to the President; is that correct?

Mr. **MEESE**. I was at least one of those, yes.

Senator **METZENBAUM**. You were living in San Diego in 1976; is that correct?

Mr. **MEESE**. Yes, sir.

Senator **METZENBAUM**. Were you not aware, at least from the news reports, in 1976 of an admonition by the San Diego County Grand Jury to the sheriff on his relationships to officials at the Rancho La Costa Resort near San Diego?

Mr. **MEESE**. I do not believe I was aware of that.

Senator **METZENBAUM**. In fact, did you know that the grand jury criticized the sheriff for his relationships and said, "The sheriff would do well to reexamine his relationship with known and suspected organized crime figures"—you are not aware of that now, and were not aware of it——

Mr. **MEESE**. I am aware of it now because it has been brought to my attention, but I believe in 1976, at a time when I was doing a great deal of traveling during that period, I do not remember being aware of it.

Senator **Metzenbaum**. Well, when you recommended him for appointment to the President's Commission on Organized Crime, did you not do an adequate job of checking to see what the background was of some of your recommendations, particularly this one?

Mr. **Meese**. Senator, I gave several names to the Justice Department as possible candidates. I knew that they would all be thoroughly investigated by the FBI and by the Justice Department. I knew of Sheriff Duffy as a man who had a distinguished background in law enforcement. He had been the president of the California Peace Officers Association, the California Sheriffs Association, a member of the national executive board of the National Sheriffs Association, and was then, I believe, the president of the police executive research forum; he was well known as a very reputable and distinguished law enforcement officer in California.

I sent his name, along with some 10 or 12 other names, over to the Justice Department for their review, investigation, and ultimate recommendation to the President.

Senator **Metzenbaum**. Now, all these positions you just mentioned were positions held by Mr. Duffy?

Mr. **Meese**. At one time or another in the last 5 years, yes, sir.

Senator **Metzenbaum**. I am impressed, Mr. Meese, that you can rattle off all those positions, and therefore wonder whether or not you were aware of the fact that the sheriff had also been criticized by the grand jury for accepting several thousand dollars in campaign contributions from La Costa officials.

Did you know that?

Mr. **Meese**. No, sir, I was not aware of that until later when I received some material in the mail, which I also turned over to the Department of Justice.

Senator **Metzenbaum**. Were you aware when you recommended Sheriff Duffy that he had volunteered a sworn statement to the grand jury, testifying to the good character of the resort and its owners?

Mr. **Meese**. No, sir.

Senator **Metzenbaum**. Were you also aware that Sheriff Duffy gave testimony considered favorable to La Costa in a 1982 libel trial?

Mr. **Meese**. That was the Penthouse magazine trial, I believe?

Senator **Metzenbaum**. I think so.

Mr. **Meese**. I was not aware until later.

Senator **Metzenbaum**. Now, Sheriff Duffy was nominated in the summer of 1983. Immediately thereafter, the appointment was highly publicized and controversial.

I have a Wall Street Journal article, dated August 24, 1983, that goes into great detail about the controversy.

In 1978, a California crime commission listed Moe Dalitz, one of the founders of La Costa, as one of the top organized crime figures in California.

Mr. Meese, who was the vice chairman of that commission?

Mr. **Meese**. I was.

Senator **Metzenbaum**. Mr. Meese, I have here an article from the San Diego edition of the Los Angeles Times, dated September 1,

1983. The headline reads: "Meese vouches for Duffy's character; says he knows of no reason why Sheriff should not serve on organized crime panel." That is dated September 18, 1983, and it quotes you as saying: "I personally know of no reason why the sheriff would not be eminently qualified to serve. He is one of the outstanding law enforcement leaders in the country."

Were you accurately quoted?

Mr. **Meese**. I was accurately quoted, yes, sir. That was the same conclusion, I might add, that the Justice Department came to after a thorough investigation of Sheriff Duffy.

Senator **Metzenbaum**. And then, I think, when you were quoted in that article, it states that you suggested that:

> Duffy should not be held culpable for accepting campaign contributions from La Costa officials. Duffy raised $21,235 in his initial run for office in 1970, including $2,500 from a La Costa subsidiary, and $500 each from three of Dalitz' La Costa partners, one a convicted stock swindler. Meese said he does consider the acceptance of such contributions improper, unless the campaign contribution is solicited by the public official.

I think it is supposed to mean "he does not," but I read the article as it stated.

Is that a pretty accurate statement of your position?

Mr. **Meese**. Yes, sir. The newspaper reporter raised that qestion with me, and I gave that response, or the corrected response, as you read it correctly.

Senator **Metzenbaum**. Now, Mr. Meese, in late November 1983, the first meeting of the Organized Crime Commission was convened in Washington. Sheriff Duffy came here and is reported to have had a meeting at the White House, and then he resigned from the Commission.

Would you relate to the committee your contacts, conversations and meetings with Sheriff Duffy over the course of this nomination process?

Mr. **Meese**. I may have had some conversations with Sheriff Duffy during that period of time. On or about the time that he decided to withdraw, I did not have any conversations with him at that time. I do not know whether there was a meeting at the White House, as you describe; at least, I was not present if there was one.

Senator **Metzenbaum**. Did you meet with Sheriff Duffy or talk with him about resigning?

Mr. **Meese**. No, sir.

Senator **Metzenbaum**. If he had spoken with you, would you have urged him to resign?

Mr. **Meese**. I would know of no reason why he should, since the Justice Department investigation found that he was fully qualified to be a member of the Organized Crime Commission.

Senator **Metzenbaum**. Did you urge the President to keep Duffy on the commission?

Mr. **Meese**. No, sir.

Senator **Metzenbaum**. Are you aware of any participation in this controversy by Fred Fielding?

Mr. **Meese**. I do not know. I would imagine in a matter like this, the Organized Crime Commission, he would have some relationship with the Department of Justice on it.

Senator **Metzenbaum**. Didn't Fred Fielding intervene, actually, and urge Sheriff Duffy to resign?

Mr. **Meese**. Not to my knowledge. I do not know whether he did or not. Not to my knowledge.

Senator **Metzenbaum**. Well, you know Sheriff Duffy, obviously, quite well. Do you know the circumstances under which he did, in fact, resign?

Mr. **Meese**. He did not resign. He withdrew his name. I do not believe they had been sworn in at that time. He withdrew because he felt that the controversy that had been created, despite his being cleared by the Justice Department, could interfere with the effectiveness of the Organized Crime Commission, and therefore, he withdrew.

Senator **Metzenbaum**. Mr. Meese, earlier today, Senator Kennedy, and Senator Mathias, I think, yesterday, were talking with you about three major cases. One was the *Seattle* case, in which the attorney general of Washington contacted Mr. Nofziger and urged that the administration reverse its position. The other, I think, was the *Grove City* case, and the other was the *Bob Jones* case.

Now, in each of those cases, as I understand it, the policy decisions with respect to the handling of the case, the position that the Attorney General would take was not made at the Attorney General's office, but they were made on a political basis at the White House.

Senator Mathias' case is of particular interest, because in that one, you had responded, indicating that in some instances, attorneys speak with attorneys on the other side and urge them to reverse their position or to take a different position in a case.

But the significant point that was overlooked in that discussion, as I see it, was the fact that the Attorney general of the State of Washington did not contact the U.S. Attorney General. He went to the political operative—and I am not certain what title Mr. Nofziger held—but he went to the White House and talked to them on a political basis and said 99 percent of the people in our party, of the people who supported Ronald Reagan, don't agree with the administration's position, and used that kind of political involvement to affect the decision of the Attorney General.

Now, I cannot hold you responsible for that, although I would guess that in some of those cases, you participated in the decision. But I think that many of us on this committee would like some reassurance from you that when and if you are appointed Attorney General, that the decisions to be taken by the Attorney General's office will be made by the Attorney General and his associates, and that they will not be made on a political basis, as determined by those who sit in the White House.

Mr. **Meese**. Senator, first, I must correct the premise on which you based your question. None of those three cases were decided in the White House or on a political basis. But I would assure you that, if I am confirmed as Attorney General, the decisions on cases will be made in the Department of Justice and not on a political basis.

Senator **Metzenbaum**. Well, I appreciate that assurance, and when you say the decisions were not made, certainly, you know of the President's little memo with respect to the *Bob Jones* case. We know of the attorney general of Washington calling Mr. Nofziger at the White House—and I do not know the details with respect to the *Grove City* matter—but I would just say that I appreciate your assurance to that effect, and will go further in a moment.

Now, Mr. Meese, for over 70 years it has been, per se, illegal for a manufacturer to fix the retail price of its product. The law was not enforced by the Justice Department under Mr. Smith or under Mr. Baxter.

Now, I am concerned that the laws be enforced as they are, not just the way Mr. Baxter, Mr. Smith, Mr. Meese might prefer them to be. Can we have some assurance from you that you will vigorously enforce the law in the area of antitrust as well as all other laws based upon the law as it is, and if you want to advocate changes in the law, you will bring those proposed changes to the Congress, not by becoming an advocate in the Supreme Court or in any other court of this country?

Mr. MEESE. Senator, I cannot give the assurance that if, on the basis of legal analysis or on the basis of a policy position, it was my conclusion that the law needed to be changed that I would fail to utilize argument before the Supreme Court, if there was a case before it, as a means for advocating that change, if I were confirmed.

Senator METZENBAUM. You do not feel that the Attorney General of the United States should argue for the law as it is rather than arguing for change, and if the Attorney General believes that the law should be changed that it is the responsibility of him or the President, as the case may be, to come to the Congress to urge them to change the law?

Mr. MEESE. Well, Senator, obviously any statutory change in the law should be presented to the Congress to consider that change. But if the law is not settled and if it is a matter of interpretation of a congressional statute or of the Constitution, then I think the Attorney General has not only the right but the obligation to argue his view of the law and how it should be interpreted before the Supreme Court.

Senator METZENBAUM. Well, let me ask you this. There are currently over 30 State investigations of resale price maintenance. Do you believe in the concept of resale price maintenance, which is the policy as enunciated by the Congress time and again?

Mr. MEESE. Actually, if I understand correctly, the policy of the Congress is against resale price maintenance.

Senator METZENBAUM. You are correct, you are correct.

Mr. MEESE. And I believe that is the law and I have no quarrel with that.

Senator METZENBAUM. Can we expect the Antitrust Division of the Department of Justice to conduct appropriate investigations with respect to enforcement of the law as pertains to the whole issue of resale price maintenance, as Congress has enunciated the law?

Mr. MEESE. I am sure that the Department will. Certainly, if I am confirmed, they will uphold the law, in this field as in other fields.

Senator METZENBAUM. At a time when the Antitrust Division has suffered a loss of almost 100 attorneys, your predecessor authorized an organized effort to intervene in private antitrust cases on behalf of defendants.

Now, historically, as you well know, the Department has intervened in private cases only to support Division enforcement efforts or at the request of the Court. Mr. Baxter, however, devoted significant time to taking the opposite side of the issue and came into court in opposition to effective antitrust enforcement.

Do you have an opinion on that subject and the propriety of going into Court and using the limited time of your antitrust lawyers to support the position of the corporations who are being charged with violating the antitrust laws rather than the traditional role in both Republican and Democratic administrations to support effective antitrust enforcement?

Mr. **Meese**. Senator, my view is that it would depend upon the situation I would point out that you mentioned the resources of the Division having been depleted. Largely, that was due to the fact that two major cases had been completed during the course of the year prior to the most recent budget.

Senator **Metzenbaum**. One of the abuses of Watergate was the intermingling of the White House and Attorney General Mitchell with antitrust enforcement. Do you think there is ever a time when a political consideration should be involved in connection with the subject of antitrust enforcement or any other policy of law enforcement by the Justice Department?

Mr. **Meese**. Senator, I do not believe that there should be political interference in any case. I do not think there should be policy interference in a specific enforcement action.

On the other hand, there may be matters where antitrust policy needs to be discussed more widely than in the Justice Department, as we learned in previous questions and answers here in these hearings, where there are other entities in the Government that are involved and when there are other considerations that are necessary.

Senator **Metzenbaum**. Mr. Chairman, as you know——

The **Chairman**. The Senator from Ohio.

Senator **Metzenbaum**. On Monday, we will have two of the witnesses who will be present. I will have additional questions for them. It is possible that I might have a few more questions for Mr. Meese, but I appreciate the courtesy of the chairman and Mr. Meese in permitting me to have this extended inquiry of him. If I have additional questions, they will be limited in number, you may be sure.

The **Chairman**. Senator, I think that is all right. We would like to finish with Mr. Meese by the Senators today, if possible. And unless there is something that you feel is very important, I hope it will not be necessary to——

Senator **Metzenbaum**. The chairman has been very fair. I have no thoughts of just opening up a new line of inquiry, but it is possible that out of the deposition being taken on the west coast and the two men coming in, that there just must be some additional.

The **Chairman**. Could we confine it to a response to that?

Senator **Metzenbaum**. Yes; I do not intend to impose upon the chairman's good graces.

The **CHAIRMAN**. Thank you. So we will confine it to a response to their testimony. So, Mr. Meese, if you could just be available in case we do call you.

Mr. **MEESE**. I will be available, Mr. Chairman.

The **CHAIRMAN**. Now, are there any other questions? Senator Leahy?

Senator **LEAHY**. I had other questions. I want to continue where I was before.

The **CHAIRMAN**. Senator, if you will just allow me—I have not taken any time. I will just ask three or four questions and then turn right to you.

Senator **LEAHY**. Oh, of course; of course.

The **CHAIRMAN**. Mr. Meese, have all the loans and interest been paid except for the two fully secured mortgages on your McLean home?

Mr **MEESE**. Yes, sir.

The **CHAIRMAN**. Did you initiate the nomination of Mr. McKean to the Postal Service Board?

Mr. **MEESE**. No, sir.

The **CHAIRMAN**. Did you initiate the nomination of Mr. Barrack to be Assistant Secretary of Commerce?

Mr. **MEESE**. No, sir.

The **CHAIRMAN**. Did you initiate or suggest that the President appoint Gordon Luce to the post of alternate United Nations delegate?

Mr. **MEESE**. No, sir.

The **CHAIRMAN**. Did you initiate the nomination of Mr. Edwin Gray to be chairman of the Home Loan Bank Board?

Mr. **MEESE**. I am not sure whether I initiated it; I certainly supported it.

The **CHAIRMAN**. Did you ever initiate the appointment of anyone to public office who helped you to sell your home or loaned you money?

Mr. **MEESE**. Not to the best of my knowledge.

The **CHAIRMAN**. I think that is all the questions I have now.

Senator **LAXALT**. May I make an observation or two, or ask a question or two, Mr. Chairman?

The **CHAIRMAN**. The distinguished Senator from Nevada.

Senator **LAXALT**. Is it not true, Mr. Meese, that at the request of the House of Representatives the Government Accounting Office made a thorough investigation of all your transactions relating to the loans on your house?

Mr. **MEESE**. Yes, Senator; they did.

Senator **LAXALT**. And this investigation extended over a substantial period of time?

Mr. **MEESE**. Yes, Senator.

Senator **LAXALT**. And the GAO rendered a voluminous report consisting of many, many pages?

Mr. **MEESE**. Yes, Senator; and I believe that report has been filed with the committee.

Senator **LAXALT**. Is it not also true that the Government Accounting Office found absolutely no impropriety on your part in connection with any of these transactions?

Mr. **MEESE**. That is correct.

Senator LAXALT. Save the fact that they did indicate that the nonpayment of some of the interest might be subject to reporting?

Mr. MEESE. Yes, they did indicate that.

Senator LAXALT. Reporting for ethic purposes within the Government?

Mr. MEESE. Yes, sir; and they did indicate that there was no wrongdoing on my part in regard to that, since the instructions for the ethics form failed to state that that was a requirement. They indicated that the ethics instructions should be changed. Subsequently, I did correct my ethics form to reflect that forebearance.

Senator LAXALT. And I think the record should clearly indicate that GAO found that the reporting requirement was of such a character and description that you probably did not even know of it.

Mr. MEESE. That is what the GAO found.

Senator LAXALT. So I would like, Mr. Chairman, for the record to clearly indicate that despite all the questions that have been asked at this hearing, this matter has been thoroughly investigated by a nonpartisan arm of this Government, at great length. And Ed Meese, in connection with these transactions, was given an absolutely clean bill of health.

I thank the chairman.

The CHAIRMAN. Thank you very much, Senator. And I might say, Senator, I am not sure whether you were in here at the time, but we have placed in the record this morning a letter from Government Ethics on this very question that you have brought out to substantiate just the point you made.

Senator LAXALT. I thank the chairman.

The CHAIRMAN. And also, in addition, one from the GAO.

The Senator from Vermont.

Senator LEAHY. Thank you, Mr. Chairman.

Mr. Meese, I would note in regard to what the distinguished Senator from Nevada just said in raising the point of your house, I have also seen some accounts that in McLean and the idea of living there—the people are all wealthy. Well, the Senator from Nevada lives in McLean and he is not wealthy, and I know of at least one or two other people who live in McLean who do not fall into that category.

Senator LAXALT. With the Meeses, I guess we have three families in McLean who are not wealthy.

Senator LEAHY. What is that?

Senator LAXALT. With the Meeses, I guess we have at least three families in that area who are not wealthy.

The CHAIRMAN. I live in McLean and my house is mortgaged, too. [Laughter.] And I want to say furthermore that I have had great sympathy for Mr. Meese during this hearing when he is told about his budget troubles. It reminded me very much of my own.

Senator LEAHY. Mr. Chairman, I have just so many comments that leap to mind and if we were in the cloak room, I would come with them all, but I will pass.

I must admit, though, that the testimony has impressed some of my neighbors back home in Vermont who realize that part of the year I live in McLean, and you are doing wonders for the real estate market out there.

Mr. Meese, I will just take a moment. I know your wife and daughter have been sitting through this whole thing and I think they deserve a compliment, and I think anybody deserves a compliment who sits through any hearing on any subject whatsoever all the way through, but they especially do in what must be the most uncomfortable chairs known to anybody. And to sit through this, I think they deserve a great compliment in being there through it all and maintaining the obvious interest they have had.

I would like to go back to a couple of things that I had covered this morning. They are on the Sunkist question, and my understanding of your testimony at that time, Mr. Meese, is you said that it would be improper if the White House acted solely on that, speaking of the marketing orders; that they acted solely on the political consideration.

You had received a letter, your office had, from the head of Sunkist saying, in effect, if I paraphrase it correctly, that they were concerned that the administration would alienate a large part of the Republican constituency unless they had OMB act in a particular fashion on the marketing orders.

And you said that it would be improper if the White House acted solely on the political concerns. Would it be really proper to act on such things at all, is a rulemaking such as this marketing order—to act based on partisan political concerns.

Mr. MEESE. No; I do not believe it would be proper, Senator. You added the term partisan. The word political means many things; it can range all the way from policy decisions to partisan activity. In the sense that you are using it, I think it would not be proper.

Senator LEAHY. Well, of course, that is the sense I used it this morning. I mean, when we get a memo that says members of the Republican administration are alienating the California agricultural community, thereby jeopardizing the upcoming elections for many Republican candidates, and on and on—it is critical to the political well-being of California Republican candidates that the President intercedes, directing administration officials to support California agriculture—that is not political in any sense other than partisan political.

Mr. MEESE. Correct.

Senator LEAHY. Every decision, just going back to being a political scientist, is political. But there was no question that we were speaking of partisan politics in that regard, was there?

Mr. MEESE. No, sir; and that is why I do not feel it would be proper to enter something on the basis of partisan politics.

Senator LEAHY. Now, the memo then said something to the effect, the account—it is referring to the same matter—the account of the meeting between Secretary Block and the Vice President would generally allay fears that internal administration discord on market orders could have unfortunate political impacts on certain political contests.

Would you say that that might give an appearance that perhaps you moved too far into partisan political matters?

Mr. MEESE. Well, if, in fact, action was taken on a partisan basis by us but this is merely what somebody is writing to me.

Senator LEAHY. If, in fact, what? I do not understand your answer.

Mr. **Meese**. Are you quoting from the letter?

Senator **Leahy**. I did not understand your answer.

Mr. **Meese**. I am sorry. I did not understand the question, I am afraid.

Senator **Leahy**. I mean, does that give an image of impropriety?

Mr. **Meese**. Does what, sir? I am sorry; I missed the question.

Senator **Leahy**. The quote that I just made from a memo of a Mr. Boggs to a Mr. Cribb, which I understand you are aware of.

Mr. **Meese**. I do not think it would be improper. I think that this memo is trying to answer a letter, again, without alienating somebody who is writing to me and at the same time not doing anything improper.

Senator **Leahy**. But you understand, though, do you not, Mr. Meese, the import of my questions? Let me put you in the position of being in the Justice Department now as Attorney General.

Would you say a memo of that nature, referring to an action by the Justice Department either in a civil suit or a criminal suit, would give at least the appearance of impropriety?

Mr. **Meese**. Again, if action was taken that was based upon a partisan political influence, then I think it certainly would. Whether that sentence would or not—I doubt if that kind of a sentence would be used in reference to something happening within the Department of Justice.

Senator **Leahy**. I may want to come back to this matter, but to go back now to the draft registration questions and the question of selective prosecution, when my time ran out earlier you had said that you did not understand what the Government's policy of prosecution was.

I asked you, considering the fact that Mr. Lipp of the Justice Department had used that very term regarding the selective prosecution when testifying to the House Committee on the Judiciary on July 28, 1982, on draft prosecution policy—my understanding of your answer is that you did not follow in any way the concern on that matter; is that correct?

Mr. **Meese**. To the best of my knowledge, I did not follow either of those hearings or generally the prosecution decisions of the Department of Justice, no, sir

Senator **Leahy**. And that was either in your capacity as counselor to the President or a member of the Military Manpower Task Force or as selective service liaison officer?

Mr. **Meese**. I did not follow it closely. There was a discussion at one meeting of the Military Manpower Task Force about the enforcement of the selective service registration laws, but as I say it was not something that I was following on a consistent or directed basis.

Senator **Leahy**. Do you recall when that one meeting of the Military Manpower Task Force was?

Mr. **Meese**. I believe I have a document here that may enable me to find it, but I think it was sometime in either 1981 or 1982. I have here a document that indicates that there was a meeting on the 12th of April, presumably in 1982.

Senator **Leahy**. And were you at that meeting?

Mr. **Meese**. Yes, sir, I was.

Senator **Leahy**. Then let us take that meeting. Would it refresh your memory to know that the transcript, at pages 23 and 24 of the meeting you just referred to, includes this statement from Selective Service head, General Turnage:

> Secondly, on the 20th of July the New York Times article came out and stated that Selective Service had sent the first 123 names to Justice for those people who had failed to register, and this was the so-called passive enforcement system where somebody had reported that a neighbor's son had failed to do that?

Mr. **Meese**. I do not know whether that statement was made. I do not remember it, but it is not impossible and it could have been made.

Senator **Leahy**. It is my understanding that the transcript at pages 23 and 24 of the meeting you have just referred to has that.

Mr. **Meese**. I would not be surprised if it did. My understanding was not that this was the only list, however, that was going to be used for prosecution.

Senator **Leahy**. Now, yesterday, Mr. Meese, my understanding of your testimony was that you did not have knowledge of the draft registration resistors' prosecution.

Mr. **Meese**. I did not have knowledge in the sense of how they were being selected or who was being prosecuted or what the process was in the Department of Justice. I did know that some people were being prosecuted.

Indeed, I believe in the questioning I indicated that I had been asked to be a witness. I am not sure whether that was before you or before one of the other Senator's questions.

Senator **Leahy**. But you did not have the kind of ongoing, close observance of what was being done on these prosecutions?

Mr. **Meese**. No, sir.

Senator **Leahy**. I find also in the transcript of the same meeting that we have been talking about, at page 45, Mr. Harrington saying, "When is the first felony prosecution planned?" Mr. Meese replies, "You will not be here." What did you mean by that?

Mr. **Meese**. No. I believe the transcript said, "You want to be there?" I was asking him if he wanted to be there; I was kidding him.

Senator **Leahy**. It says, "You want to be there?" It does not say, "You will not be here?"

Mr. **Meese**. The copy of the transcript that was reprinted in the Washington Post has that question, and it says, "Meese: you want to be there?"

Senator **Leahy**. Well, the transcript that I have has it this way, on page 45, "Chairman Weinberger: All right. Any other questions?" "Mr. Harrington: When is the first felony prosecution planned?" "Mr. Meese: You will not be here."

Mr. **Meese**. I do not think that is an accurate statement. I think it is more accurate that I asked the question, "Do you want to be there," because then the transcript goes on to say: "General Turnage: You should be on Phil Donahue, John. No; I think it is going to be sometime in June or July."

Does your transcript say the same thing?

Senator **Leahy**. Well, my transcript does. My transcript also says, "You will not be here." I have taken that from the transcript that your office provided us, which says, "You will not be here."

Mr. MEESE. I cannot understand the discrepancy, but I do know that what I said at the time was, "You want to be there?"

Senator LEAHY. Is that the way it was reported in the——

Mr. MEESE. Washington Post; yes, sir.

Senator LEAHY. So the Washington Post has your recollection, but the transcript has what you gave my office, "You will not be here."

The CHAIRMAN. Mr. Meese, if the transcript is incorrect, just tell him what it should be.

Mr. MEESE. Well, it should be, "You want to be there," because I am sure that is what I said. I was kidding him.

Senator LEAHY. And you had never at any time, even including when you sent the transcript up to my office, made any changes in what the transcript had said before?

Mr. MEESE. No, sir. I had not seen the transcript, as a matter of fact.

Senator LEAHY. Where did the Washington Post get this story?

Mr. MEESE. Well, according to the Washington Post, it says, "Following are excerpts from the transcript of the April 12 meeting of President Reagan's Military Manpower Task Force at the Pentagon. It was chaired by Defense Secretary Caspar W. Weinberger." So, apparently, they had access to a copy of the transcript in some way.

Senator LEAHY. Did they check with you for corrections in the transcript before they printed this apparently leaked transcript?

Mr. MEESE. No, sir, they did not.

Senator LEAHY. But it is good that they got it different than the transcript you provided me?

Mr. MEESE. All I know, sir, is what I had in mind at the time. I might also point out that that transcript does not make sense either, because John Herrington still is here.

Senator LEAHY. Now, you had referred to General Turnage, in which he said, "I think it is going to be sometime in June or July." Once again, the individuals already were in the Justice files. That would not be people who would be found by data matching; is that correct?

Mr. MEESE. I do not know. I would assume that would be correct, although I do not know for sure.

Senator LEAHY. Well, Mr. Turnage goes on to say, "We will notify Justice of that and those will be the guys we go after first, so we hope in June or July." Does that comport with your recollection?

Mr. MEESE. I think that is correct, yes, sir.

Senator LEAHY. Are you aware that the first indictment of the only 16 to be indicted came down in June?

Mr. MEESE. I am not aware of the exact month, but I can understand that. I think it should be noted, Senator, that one of the things that was discussed, I do not believe at this meeting, was the fact that the Selective Service System and the Government were not interested in prosecuting people; they were interested in getting registration.

And in many cases when a person would not register, they would send people out to talk with them. They would call the parents; they would send them certified letters. They had a regular process to do everything possible to obtain the registration rather than to prosecute, and prosecution was always the very last resort.

Senator **Leahy**. Do you recall this exchange in the transcript: "Mr. Harrington: I think the cases should be quiet and pick the right jurisdiction so you do not end up in New York or Chicago, and end up in Omaha or somewhere like that for your first few trials." "Chairman Weinberger: Not the District of Columbia." "General Turnage: There cannot be any selective prosecution, but I understand there is prosecutorial discretion; I have got some names."

Mr. **Meese**. Yes; I do remember that.

Senator **Leahy**. Now, Mr. Meese, you, like me, have been a prosecutor and you are an attorney with prosecutor's experience. How would you feel about proceeding on that basis?

Mr. **Meese**. Senator, it was my understanding here that this was a discussion not with Justice people; this was a discussion with the selective service people. It was my understanding that these were the names they had then, but that the prosecutions would not be limited to those names.

As a matter of fact, my personal views, if that is what you are asking, are that first of all they should go through the process that I described earlier to avoid prosecution in every possible case, but that there should not be a selected prosecution aimed only at those people who are vocal in advocating their dispute with the draft registration program.

Senator **Leahy**. But I mean they are very specifically talking about selective prosecution: "Pick the right jurisdiction so you do not end up in New York or Chicago." That takes care of the people in New York and Chicago. And Weinberger is saying, "Not the District of Columbia," so that takes care of the District of Columbia people.

Looking at that today, as the man designated to be Attorney General, does that give you pause?

Mr. **Meese**. Well, the reason that was stated as to why they should not look in the District of Columbia or the larger cities was that it was felt that they were more likely to have demonstrations surrounding the trials. And so the import of what they were saying there was to have the first trials not as major demonstrations and incidents, but to have the first trials in a more quiet atmosphere.

But there was nothing, to my knowledge, at that time which would indicate they would be the only trials.

Senator **Leahy**. Mr. Meese, was there ever any suggestion anywhere in this transcript at all that that was the reason, to keep away from having demonstrations or anything else?

Mr. **Meese**. That was clearly what I understood by that conversation at the time, and I think that if you talk with the people involved, they would say the same thing.

Senator **Leahy**. Did you at any time say you go through this kind of selective prosecution to avoid demonstrations?

Mr. **Meese**. That was what they were talking about here; yes, sir.

Senator **Leahy**. But there is nothing in the transcript to say that, is there?

Mr. **Meese**. Somehow, that was the understanding that I had at the time, and I think that was probably implicit in everybody's understanding at the time, that it had to do with demonstrations.

Senator **Leahy**. Well, does that then bring it to a law enforcement matter or a political decision?

Mr. **Meese**. We were not deciding the prosecutions ourselves anyway. We were talking with the client or with the complainant, not with the people who were making prosecution decisions. There was no one there at any of these meetings of the Military Manpower Task Force from the Justice Department.

Senator **Leahy**. Well, you are aware, are you not, that one ninth circuit judge found the Government's policy to be impermissible, selective prosecution in this case?

Mr. **Meese**. I believe that was a district court judge, not the ninth circuit

Senator **Leahy**. Did not three judges in the sixth circuit find that judge's reasoning persuasive?

Mr. **Meese**. I do not know of that case, if there is one, sir.

Senator **Leahy**. I am told that the two ninth circuit judges who ruled for the Government did so on the basis that the draft nonregistrant had not shown a prime facie case that the Government's selective enforcement was motivated to prosecute him because of his first amendment activity.

The court noted that the Government was shown to be aware of the likelihood that the consequence would be prosecution of only those who exercised their first amendment right to dissent. The Supreme Court is now being asked to decide the question.

If you were Attorney General, would you want to see us get into a situation where we would be treading that kind of a rather fine line?

Mr. **Meese**. No, sir; I would not.

Senator **Leahy**. I have been shown a story and I will ask you about it so you can tell me whether the reporting is correct or not. The report is a statement of a former California Department of Justice intelligence officer who worked with you and is now a prosecutor in California.

He said that in dealing with draft board demonstrations in the bay area that you, quote, "devised a plan to develop a prosecutable case against those who were committing the violence, particularly the leaders."

And then, summarizing, your plan picked them off to be arrested, and because they were the leaders it would have a demoralizing effect and bring things to a "screeching halt."

Now, that was a story in the New Republic and I have no way of knowing if it is accurate or not, but it said the strategy was used successfully against antiwar demonstrators at San Francisco State University, picking 17 ringleaders to arrest.

Is that story accurate, as I have summarized it?

Mr. **Meese**. I do not have a recollection specifically of developing such a strategy. I do know that it was common practice, if you had an illegal event, to try to arrest the ringleaders. These would be illegal activities, either trespass activities or illegal demonstrations by people who had refused to disperse after an order from the police and that sort of thing.

There was an attempt made to arrest the ringleaders whenever possible. I think that was standard police practice at that time.

Senator **Leahy**. Yesterday, you testified that it would be fair, although it might give the appearance of unfairness, to prosecute only vocal dissenters of the draft registration law. Do you stand by that testimony?

Mr. **Meese**. Yes, sir.

Senator **Leahy**. So you think it would be fair, even though it might give the appearance of unfairness, to prosecute only the vocal dissenters of the draft registration law?

Mr. **Meese**. Well, I think it is fair to prosecute anybody who is violating the law. I do not think it would give the appearance of unfairness or could conceivably have been unfair to prosecute only those who were advocating resistance to draft registration. It would depend on the circumstances.

Senator **Leahy**. Let us back up.

Mr. **Meese**. Could I give an example? If you had two people, both of whom refused to register for the draft, after all the counseling, and all the process had been gone through—the counseling of their parents and all the other things that happen in these cases—and you had two people, the facts were actually absolutely the same as far as their failure to register for the draft, which is the offense. And assuming one was a vocal advocate and the other was not a vocal advocate, to prosecute only the vocal advocate and not to prosecute the nonvocal, failure-to-register violator, would it seem to me, that would be unfair.

But if you only had a vocal advocate who had self-proclaimed his unwillingness to register for the draft, and that was the only one you had, then that would not be unfair.

Senator **Leahy**. So I should take your testimony of yesterday in conjunction with what you have said today to get the full, clear picture?

Mr. **Meese**. I think that would give a fuller explanation of my testimony yesterday; yes, sir.

Senator **Leahy**. You said it is always fair to prosecute anybody who has broken the law.

Mr. **Meese**. I agree.

Senator **Leahy**. With some rare exceptions, I agree with that, too. We do have, of course, the fact that thousands of lawbreakers are not prosecuted; some because they are not found, and others because prosecutorial discretion is exercised.

Some of the drug laws, for example, go unprosecuted; some of the so-called victimless crimes, although I have never liked that term, go unprosecuted. And some, just simply because of the lack of personnel to do it, go unprosecuted.

But what I am talking about is those instances, if you have a number of people—you have open-and-shut cases against them, provided you want to proceed with them, and then only a certain number are selected. You have 20 people that could be prosecuted for the same offense. You have got an open-and-shut case, and you prosecute only five.

Do you agree with me that you must be extraordinarily careful how those five are picked?

Mr. **Meese**. I certainly would, Senator.

Senator **Leahy**. Or even why the choice was made to pick only five?

Mr. **Meese**. I would be surprised if there was a valid reason to pick only five, when you have all the cases there in front of you.

Senator **Leahy**. And you understand my reasoning in asking the questions on whether a person is prosecuted based on, in effect, the exercise of his first amendment rights rather than because a crime might have been committed?

Mr. **Meese**. Yes, sir; I do understand your thrust, and I think you and I agree completely on that point.

Senator **Leahy**. Now, unlike my earlier questions, which I think went into areas that nobody else had covered, I do want to follow up on some already covered. I do not think we will be going over the same ground. But I would like to talk about the so-called Levi guidelines. Last spring Attorney General Smith issued some new guidelines on general crime, racketeering enterprise, and domestic security, terrorism investigations.

They combined and revised the so-called Levi guidelines on domestic security investigations and the Civiletti guidelines on general crimes and racketeering enterprises investigation. Now, I have made some comments about those at other Judiciary Committee meetings and in other forums. But did you have a chance to personally review Attorney General Smith's new guidelines before they were issued?

Mr. **Meese**. No, sir; I did not. I believe I was informed about them. I may have received an information copy, but I do not believe I reviewed them in detail.

Senator **Leahy**. So you did not personally sign off or approve the new guidelines before they were issued?

Mr. **Meese**. To the best of my knowledge, no. I think the Attorney General issued those guidelines after consultations within the Department of Justice. I do not think there was broader consultation on them, that I can remember at least.

Senator **Leahy**. You have no recollection of anybody else in the White House signing off or reviewing these guidelines?

Mr. **Meese**. I do not believe so. I have no recollection of it; no, sir.

Senator **Leahy**. From what you knew of them were you satisfied that the matter was thoroughly reviewed by the FBI and the Department of Justice?

Mr. **Meese**. Yes, sir; I was. And I have had conversations as recently as within the last week with the Attorney General and with the Director of the FBI about those guidelines, and I understand they are both satisfied with them.

Senator **Leahy**. Now, last March a number of us had asked for some interpretations from the Department and they sent a number of interpretations to me and Senator Biden and Senator Huddleston concerning the new guidelines. Are you familiar with these interpretations?

Mr. **Meese**. No, sir; I am not.

Senator **Leahy**. I understand that the FBI has drafted a set of implementing instructions to its field agents concerning their new guidelines. Do you know the status of these instructions?

Mr. **Meese**. No; I do not know the status of those.

Senator **LEAHY**. Do you expect Attorney General Smith to issue these instructions before he leaves office or do you have any knowledge one way or the other on that?

Mr. **MEESE**. I do not have any knowledge whether they are issued by the Attorney General or whether they are issued by the Director of the FBI.

Senator **LEAHY**. Do you think it would be useful and appropriate to give full instructions to field agents on how to interpret the guidelines consistent with the first amendment?

Mr. **MEESE**. Yes, sir; I do.

Senator **LEAHY**. Do you think that it should be done specifically with the idea, aside from any other guidelines, that there should be some specifically on first amendment guidelines?

Mr. **MEESE**. I think that there should be instructions on interpretation of the guidelines, and I think that the first amendment aspect should definitely be a consideration in the formulation of those regulations.

Senator **LEAHY**. Obviously, there will be fourth amendment questions and others in there, but I am talking about on questions of domestic security investigations. Let us take that one particularly. Do you see a first amendment question arising or at least a reason to be aware of the first amendment in domestic security investigations?

Mr. **MEESE**. Yes, sir; I do.

The **CHAIRMAN**. Any more questions, Senator?

Senator **LEAHY**. I wonder, if Mr. Meese, if you might—yes, sir. I wonder—this is only my third go-around, Mr. Chairman. I understand——

The **CHAIRMAN**. I am not rushing you at all.

Senator **LEAHY**. You notice I have tried to raise some points you have not heard before because I know of your great interest in this, Mr. Chairman. Otherwise, if we did not have this hearing all we would be able to do is all of us go out to McLean. I mean, it gives us the chance to stay in the city that much longer.

The **CHAIRMAN**. Come on out and join those of us in budget troubles.

Senator **LEAHY**. Mr. Chairman, I live in McLean. I am not trying to—I live about a half a mile from you, as you may recall.

I wonder, Mr. Meese, if you could take a look at the interpretations concerning the guidelines that were sent to me, Senators Biden and Huddleston. I realize you are getting a lot of other questions here, but I would like very, very much to know what you think of those interpretations. I am not asking for an encyclopedic answer, but I would like to know whether your own interpretations which you might be issuing would differ from those we have been sent or whether you are generally satisfied with the ones that have been sent to us.

And I wonder if you might do that and sometime prior to the end of these hearings—I understand there are a number of other people who are going te be testifying, if you could have somebody get back to me.

Mr. **MEESE**. I would be happy to do that, Senator.

Senator **Leahy**. Mr. Meese, in January 1983 the Office of Management and Budget proposed a revision of a circular that says, "Cost Principles for Nonprofit Organizations," Circular A122.

And that would have tied the allowance of cost of nonprofit Federal grantee organizations to prove that the organizations were free of political advocacy. As I looked through those, it seemed that political advocacy meant virtually all contacts with government at any level. There was quite a storm over the A122 revision all across the country. It was eventually withdrawn in favor of a stripped down proposal, which I understand is still pending.

Did you help to formulate the policies underlying the A122 revision?

Mr. **Meese**. I participated in a number of meetings—I think two or three meetings, at least—and received copies of numerous memoranda concerning those guidelines, I think some of them or the gist of them have been shared with you.

And the actual drafting of the guidelines in their various forms and the background information was not done by me. It was done by people, I believe, at OMB.

Senator **Leahy**. Were you part of the decision to withdraw the January 1983 version?

Mr. **Meese**. Yes, sir; I was informed of that decision and certainly concurred with it.

Senator **Leahy**. Did the administration have evidence of abuse, I mean, significant evidence with dollar costs that nonprofit grantees were using their Federal funds to enter political campaigns or influence legislation?

Mr. **Meese**. We had had considerable complaints and I believe there was quite a body of evidence about these activities going on, which had been reported in various newspaper columns and which was amassed by the Office of Management and Budget.

Senator **Leahy**. So, did the administration have significant evidence with dollar costs of such abuse?

Mr. **Meese**. I do not know whether there were dollar costs involved. There was, as I understand, a significant body of information.

Senator **Leahy**. Was the evidence specific evidence or anecdotal?

Mr. **Meese**. I expect that it was both.

Senator **Leahy**. Mr. Chairman, I have just one other area, and I ask it wearing the hat as one of the members of this committee who also serves on the Intelligence Committee.

In 1981 the administration considered changes in the Executive order on intelligence activities. I want to make sure I read it correctly here. It would have among other things given the CIA authority for "undisclosed participation" in domestic organizations for the purpose of "influencing the activity of the organization or its members." And I am reading from the public record of this.

The Senate Intelligence Committee unanimously—I stress that—unanimously objected to this change and it was not made. But some other changes adopted in the President's Executive Order 12333, did lift some of the previous restrictions on CIA clandestine collection, covert action and operations within the United States.

For instance, the order allowed the CIA to use clandestine collection techniques against a U.S. citizen in the United States to collect significant foreign intelligence, even if the target was a law abiding citizen having no involvement with suspected foreign agents or terrorists.

Did you play a role in the initiation or making these changes to the Executive order on intelligence activities?

Mr. MEESE. I did not play a role in initiating the changes. I did play a role in reviewing the proposed changes during this period of time by attending meetings at which they were discussed.

There was, I believe, a working group operating under the National Security Council staff and composed of several departments' representatives that actually worked on the initiation and draft.

Senator LEAHY. Did you actively participate in the deliberations over which changes had to be made in the old Executive order?

Mr. MEESE. No, Senator. I actually participated more after those changes had been recommended and reviewed the new product.

Senator LEAHY. Well, one of the proposals made in the early draft of EO-12333 was later dropped and would have given the CIA authority for undisclosed participation in domestic organizations for the purpose of influencing their activities. Were you in favor of this provision in the earlier proposal?

Mr. MEESE. No sir.

Senator LEAHY. Would you be in favor of it today?

Mr. MEESE. No, sir.

Senator LEAHY. Was it your view in 1981 that Executive order restrictions on the CIA's authority to operate within the United States should be lifted?

Mr. MEESE. Not that the restrictions should be lifted, but that they should be modified because there had been some practical problems that had occurred that needed to be worked out in the draft.

Senator LEAHY. Is it your understanding that EO-12333 gives significant new authority to the CIA to operate within the boundaries of the United States?

Mr. MEESE. Senator, I would not call it significant new authority. I would say that they would have very limited authority to operate within the United States and only in pursuit of foreign intelligence, not in any way in spying on the domestic activities of U.S. citizens.

Senator LEAHY. And not to influence activities of domestic organizations.

Mr. MEESE. And not to influence activities of domestic organizations.

Senator LEAHY. Let me ask you more on that because this is again a question that we often kick around in the Intelligence Committee. What do you see as the scope of your authority under the intelligence order to review and approve the procedures of the CIA, the FBI, NSA, and other intelligence agencies that regulate collection, storage, and dissemination of information about U.S. persons?

Mr. MEESE. The Attorney General has a responsibility to review the regulations and documents that are put forward, to promulgate them or to implement the appropriate statutes in that field, which I believe is the Foreign Intelligence Act, and to be assured of the legality of those regulations.

The Attorney General also has the responsibility to review findings as to covert actions.

Senator **Leahy**. Do you believe that the Attorney General—let us take yourself. Do you believe that you or the Justice Department have the expertise, time, and inclination to review and approve the CIA's internal procedures on collection, storage, and dissemination of that kind of information?

Mr. **Meese**. Senator, it is my understanding, without knowing all the details of the operations of the department, that there is an intelligence policy office within the Department of Justice that is staffed by very competent and experienced professionals who carry on this activity. And I have no reason to believe that they are not doing an adequate job or that it is not adequately staffed. It is something I would learn more about once I entered the department, if confirmed.

Senator **Leahy**. The Attorney General is also given the power to approve the use of intrusive techniques, such as physical searches or breakins without a judicial warrant under certain circumstances.

Would you favor shifting that authority to approve those techniques to the court established under the Foreign Intelligence Surveillance Act of 1978, which now approves electronic surveillance under an appropriate standard?

Mr. **Meese**. Senator, I have quite honestly not given any consideration to that proposal.

Senator **Leahy**. Would you be willing to keep the Intelligence Committee informed of your policies and decisions on intelligence matters?

Mr. **Meese**. Yes, sir, if confirmed, I would.

Senator **Leahy**. Mr. Chairman, I understand that the distinguished Senator from West Virginia, Mr. Byrd, would like the record kept open so he can submit some questions for the record.

The **Chairman**. Senator Percy and Senator Byrd and maybe several other Senators desire some questions to be answered for the record. So, Mr. Meese, these will be submitted to you and if you will be kind enough to answer them for the record.

Mr. **Meese**. I will, Mr. Chairman.

Senator **Leahy**. And I wonder if this evidence that we discussed about amending A122 that the administration relied on, I wonder if that could be provided to me. If it is voluminous, then at least to point that fact out and we can work out how much or how little of it might be necessary.

Mr. **Meese**. I would be happy to provide that.

The **Chairman**. It costs the Government a lot for printing, about $4 a page and then in addition the printing of records. So what we frequently do is hold the documents in the committee, Senator, if that is agreeable to you and not have to——

Senator **Leahy**. Let me see them. I suspect that may be so, but I may still want to have some of them included in the record.

I would be happy to take a look at it when it comes up and I suspect that it would not be necessary to put all of it in the record by any means, but there may be either a summary or reference to a couple of pages of it.

The **Chairman**. I think we could agree as to what would be pertinent, Senator.

Senator **Leahy**. I am sure we could. We have never had difficulty agreeing before. I am sure we will not this time, Mr. Chairman.

I have no further questions. Mr. Meese is free to provide certain things for the record and once I see those, I may have some questions based on that, but I have no further questions, and I appreciate very much the chairman's method here. It gave me a chance to go through uninterrupted. I suspect that was also easier for Mr. Meese to keep him from feeling like he is in a ping-pong game here. Thank you, Mr. Chairman.

The **Chairman**. Thank you, Senator. The distinguished Senator from Maryland had a statement he wanted to make.

Senator **Mathias**. Well, Mr. Chairman, I just wanted to say this has been a long day for Mr. Meese, Mrs. Meese, and their family. It has been a long day, too, for the members of the committee. And I think it has been a useful day.

I would offer him by way of consolation the observation that Griffin Bell made in the book about his experiences as Attorney General. At the time he resented, I think, the questioning that he received from this committee. But on reflection, he felt it had been a useful and valuable experience. He put that experience to good use in his service as Attorney General. And I hope that will be the case with Mr. Meese.

I would, Mr. Chairman, like to make the further announcement to members of the press who have expressed some concern that their green passes would not be honored after 7 o'clock at the entrance to this building. Arrangements have been made and the door which leads to Constitution Avenue nearest this hearing room will be kept open for the press as long as this committee is in session.

Senator **Leahy**. Will the Senator yield for just one moment on that? Mr. Meese——

Senator **Mathias**. On that or anything else.

Senator **Leahy**. I just wanted to say to Mr. Meese, maybe there are times when he is Attorney General he thinks this is a position of great power. Little does he know that the power resides in the chairman of the Rules Committee. That is a man of unparalleled power and he uses it, however, with great restraint.

Senator **Mathias**. Well, it is not important that Mr. Meese should know that, but it is important that you should know that. [Laughter.]

Senator **Leahy**. Touché.

The **Chairman**. Anything else, Senator?

Senator **Mathias**. Thank you, Mr. Chairman.

The **Chairman**. I understand the hearing of Mr. Bell who was up for Attorney General some years ago under President Carter has been talked about a good deal. I want to say that my recollection was that our side of the aisle did not take but very little time on that nomination. I think it was chiefly some from the other side, of which party Mr. Bell belonged to.

At any rate, the records speak for themselves.

Senator **Mathias**. Mr. Chairman, I would never contradict you, and I do not do so now, but I believe Griffin Bell's memory might be other than yours.

The **Chairman**. Well, that must be from the questions that you asked. The rest of us I do not think——

Senator **Mathias**. I think it probably was.

The **Chairman**. The Senator from Utah has a statement, I think.

Senator **Hatch**. Thank you, Mr. Chairman. I just want to congratulate you, Mr. Meese, for a difficult 2 days and for the candor and the grace with which you have handled this experience. I hate to tell you this, but it gets worse up here once you are Attorney General. Then you have to come up and justify some of the specific policies.

But I think you have handled this extremely well; I have a lot of respect for you, as I think everybody on this committee does.

You have done all of that. I will pay even more tribute to your wife and family because they have supported you 100 percent in what you have done.

And knowing you and knowing how you work, you have worked 18 hours a day ever since you have been here, trying to serve this President and this country. Now, people can differ with you with regard to ideology and philosophy and many on this committee do.

But I think that you have answered questions with candor, grace, and I think a great deal of forebearance. I compliment my colleagues here for raising these issues. But on the other hand, I surely wish you well in this position. I think you are going to make a great Attorney General of the United States. I know you will. I do not know of anybody that I have met in the field of law who grasps legal principles as quickly as you do and who wants to do what is right with those principles as much as you do.

I think you are perfect for this position. I am going to look foward to helping you all I can to fulfill this position so that when your tenure is over you will look back on it as something that was worthwhile for you and your family and for this whole country, which I know it will be.

So I want to personally thank you for the testimony you have given. I want to personally thank you for the service that you have given and thank your family as well because I know that they have sacrificed a great deal, too. Thank you for being here.

Mr. **Meese**. Thank you, Senator.

The **Chairman**. Mr. Meese, we are going to dismiss you now. We may have to recall you on Monday of next week. I want to take this opportunity to congratulate you for the articulate manner in which you have responded to questions, for the candor and frankness with which you responded to questions, and for the astute mind you have in remembering details and facts in response to the various questions propounded to you.

You have conducted yourself in a very patient manner, a very humble manner, and I think you made one of the finest impressions of any witness that has come before this committee since I have been on this committee during my service in the Senate.

And you are now excused; if you wish to remain and listen to the other witnesses who will testify, probably some for you and some against you, you are welcome to do so, or you can come back Monday and do the same.

But so far as we are concerned now you are dismissed. We are going to take a 5-minute break right at this time and then begin some other witnesses.

[Brief recess.]

The Chairman. The committee will be in order.

Will the testimony that you give in this trial be the truth, the whole truth, and nothing but the truth, so help you, God?

Dr. Hoxie. I do.

Mr. Hughes. I so swear.

Mr. Baldwin. I do.

Mr. Bekurs. I do.

Mr. Boyd. I do.

Mr. Veich. I do.

The Chairman. Be seated.

Now, we had announced that for all other witnesses, we would like your full statements to be put in the record, and if you could just summarize those in about 5 minutes, we thought that might be sufficient.

Now, the gentlemen who are away from here, I thought we would take first.

How many of you do not live in this area? Raise your hands.

[A show of hands.]

The Chairman. All but one, I believe.

All right. We will just start on this end, then.

If you will identify yourselves for the record, with your name and address, and then proceed.

STATEMENT OF A PANEL, INCLUDING R. GORDON HOXIE, PRESIDENT, CENTER FOR THE STUDY OF THE PRESIDENCY; LT. JOHNNY HUGHES, ON BEHALF OF NATIONAL TROOPERS COALITION; DONALD BALDWIN, EXECUTIVE DIRECTOR, NATIONAL LAW ENFORCEMENT COUNCIL; WILLIAM M. BEKURS, JR., DIRECTOR, REGIONAL ORGANIZED CRIME INFORMATION CENTER, NASHVILLE, TN, AND VICE CHAIRMAN, RISS PROJECT DIRECTORS' ASSOCIATION; LT. RICHARD A. BOYD, NATIONAL PRESIDENT, GRAND LODGE, THE FRATERNAL ORDER OF POLICE; MICKEY VEICH, CONGRESSIONAL AFFAIRS OFFICER, THE FEDERAL CRIMINAL INVESTIGATORS ASSOCIATION

Dr. Hoxie. Thank you, Mr. Chairman.

My name is R. Gordon Hoxie. I am from New York. I am the president and chief executive officer of the Center for the Study of the Presidency, an educational corporation which I have headed as president and chief executive officer for the past 15 years.

May I say respectfully, sir, that this has been a wonderful opportunity to witness this vital aspect of our democratic processes these past 2 days

There is only one disappointment. Everyone has so eloquently covered everything so well, but as a retired Air Force general officer, I do regret the suggestion of Mr. Meese's impropriety in his reserve duties. I say that advisedly, knowing how devoted to the armed services both Mr. and Mrs. Meese have been through the years, she being the daughter of a retired colonel who was a classmate at West Point of General Eisenhower. I know of their great devotion.

And it is ironic, but I look at my friends, like Jimmy Stewart and Jimmy Roosevelt, and they were promoted to general officers—fine general officers—they were criticized for it, but we all do our best.

Let me say this, that during these years, our center has had the pleasure of having many distinguished members of this body participate in its programs, including Senators Bentsen, Chafee, Ervin, Hawkins, Huddleston, Humphrey, Inouye, Kassebaum, Lugar, Moynihan, Pell, Randolph, Stevenson, Taft, Tower, and Warner.

One of your former colleagues, George McGovern, will be addressing this center's 15th annual student symposium 3 weeks hence. Two of your former colleagues, Stevenson and Taft, are authors of the two lead articles in the current issue of Presidential Studies Quarterly, which I am holding in my hand. This was the quarterly which was recently cited by the American Historical Association as having more articles of significance on the United States since 1945 than any other journal.

Last year, only one author had three articles in this quarterly chosen by this distinguished editorial board, and that author was Edwin Meese III.

Let me read one sentence from one of his articles which epitomizes a great citizen who loves his country. He is talking about the institution of the Presidency:

> Whatever form its organization may take, the most important responsibility that falls to those of us charged with serving in the institutional Presidency is to make sure that this high office is and continues to be one of which all Americans can be proud.

Mr. Meese has been commissioned to do a major article on separation of powers doctrine for one of the 1984 issues of the quarterly. It is the considered judgment of the quarterly board of editors and myself that Mr. Meese is one of the most knowledgeable and articulate students on the Presidency in the Nation today.

During the past 3 years I have had many opportunities to discuss executive branch organization and polices with Mr. Meese. He is extremely well read in history, political science, and law. He came to the White House with an impressive record of the study and teaching of law at the University of California at Berkeley and the University of San Diego. He became a leading educator on the administration of criminal justice. Professor Meese, as director of the Center for Criminal Justice Policy and Management at the University of San Diego, pioneered in criminal justice educational and training programs.

Mr. Meese is both an inspiring teacher and able administrator. In particular, I admire the detail, dimensions, and perspective of his views on the Presidency, on separation of powers doctrine, and on federalism. By his creation of the Cabinet councils, he did more than any other person of recent date to revitalize the Cabinet as an effective instrument of Government. As the Cabinet administrator during the past 3 years, he performed a valuable service. Mr. Meese would continue to have a salutary effect on Cabinet deliberations. He appreciates the need for good interdepartmental relations, and he would be a constructive force in those relationships, as well as within the Department of Justice.

On 10 occasions during the past 3 years, I have had an opportunity to introduce or hear Mr. Meese as a principal speaker both with large audiences and sophisticated seminars. Three of those occasions have been with outstanding undergraduate and graduate students from colleges and universities throughout the United States. He is not only masterful in presentations, but also a person of great empathy. Again and again I have seen him, no matter what the hour, agree to work with students, old and young, on their research papers. Again and again while others were having a good time in conference social hours and even at dinner, I have seen Mr. Meese meticulously refining his manuscripts.

This past year this center conferred on Mr. Meese its highest honor, its Distinguished Public Service Award. But rarely conferred, this is the award it presented to Mamie Doud Eisenhower, widow of the man who inspired the center's founding, and DeWitt Wallace, cofounder of the Reader's Digest, who had been the center's most generous supporter.

Now, in the last few weeks, as these Senate hearings approached, I received many calls from center members indicating their high regard for Edwin Meese III. Some of them prefaced their remarks by saying that they were Democrats, and, in a partisan sense, they oppose the present administration, but they have seen the dimensions of Mr. Meese's learning and his services, and they believed he should be the Attorney General of the United States, advising the President and administering the law with compassion and understanding.

Many of these center members are distinguished students of government and public policy. They recognize the historic dimension of the position of U.S. Attorney General, dating from Washington's appointment of his friend, Edmund Randolph, as the first Attorney General and as an original member of his Cabinet.

There has always been an especially close relationship between the President and his Attorney General, even to the extent of one of the strongest Attorney Generals having been appointed by his brother, President Kennedy. Now, for 17 years, the present President has sought the counsel of the man he has nominated as Attorney General. Unless there is reason to doubt the President's judgment, this nomination should be supported with particular vigor.

The position of Attorney General requires a skilled lawyer, a wise counselor, and an able administrator. With 60,000 employees in the Department of Justice in 31 divisions, bureaus, and boards, the position requires leadership and demands statesmanship. Mr. Meese is, I believe, eminently well qualified.

For my part I realize that there are those who believe the position of Attorney General should be completely apolitical. As the lawyer for the American people, as the chief law enforcement officer, and as the administrator of the Department, Mr. Meese would administer justice without political consideration. However, the Presidency is a political office, and the President has the right to seek the political counsel of all of his Cabinet members.

In the course of these hearings we have heard and will hear concerns on civil rights and social issues. Both major political parties espouse the constitutional principles of equal protection under the law and a social welfare safety net for all of the American people. Edwin Meese III is a man of compassion and humane concern who supports these tenets.

This, I do believe—and I realize there are those here who have differences of opinion, but let me just say this—that such concerned organizations as the American Civil Liberties Union, the NAACP Legal Defense and Educational Fund, and the Leadership Conference on Civil Rights will, I believe, come to admire Mr. Meese for his perspective and vigor as the Nation's chief law enforcement officer.

Like Elliot Richardson, another member of this center who is a former Attorney General, Mr. Meese has the courage and the intellectual honesty to place the law above any individual occupying the Presidency.

Further, I believe that the Senate, which has sponsored laudable legislation to redress the balance between the forces of law and the lawless, would wholeheartedly support Mr. Meese's efforts in this vital area.

Although critics of the Department of Justice have expressed concern on many complex economic and social issues, ranging from antitrust policy to freedom of information, Mr. Meese, I believe, would approach those issues with both objectivity and humanity. Mr. Meese brings considerable perspective to such issues.

For example, as regards one of this Center's volumes, "The Presidency and Information Policy," Mr. Meese has written: "The framers of the American Constitution and those who placed the new Government in operation appreciated the needs both for information and security. The principles recognized then are as true today. Information, understanding, and trust continue to constitute a vital triad in our republican form of Government."

Permit me, in conclusion, just to express the views of our 1983-84 Center Fellows, 24 outstanding students, mostly senior undergraduates or first-year graduate students, chosen from among several hundred candidates from colleges and universities throughout the United States. Several of the fellows have had an opportunity to work with Mr. Meese on topics ranging from the *Chadha* decision to the War Powers Resolution. All 24 are looking forward to their day at the White House culminating their year of study.

Typical is Leah Hagedorn, former Alabama debate champion, former Truman scholar, now a senior at Goucher College. In her call this week, she said in essence, "I want you to know, Dr. Hoxie, that I am a Democrat, but in this instance that makes no partisan difference. Mr. Meese believes in young people. We need his kind of leadership."

Above all, Mr. Meese has impressed me in all of our relationships through the years, even in the death of his younger son, as a person of great courage, deep faith, and absolute integrity. An indefatigable worker, a skilled administrator, he epitomizes those qualities of leadership which that greatest Cabinet member, Alexander Hamilton, described when he wrote: "Energy in the executive is a leading character in the definition of good government." Such energy, Hamilton reminded us, in the Federalist No. 70, "is essential to the protection of the community against foreign attacks: It is not less essential to the steady administration of the laws."

Members of the Committee on the Judiciary, it is my hope that, with all due care, concern, and dispatch, you will recommend to your colleagues in the Senate the confirmation of the appointment of Mr. Meese as the Attorney General of the United States.

Thank you for the opportunity to share these views with you.

The CHAIRMAN. Thank you very much, Dr. Hoxie. We are pleased to have you with us. You are now dismissed any time you care to leave.

[Prepared statement follows:]

TESTIMONY PREPARED FOR HEARINGS BY THE SENATE JUDICIARY COMMITTEE MARCH 1-2, 1984

by

R. GORDON HOXIE

CENTER FOR THE STUDY OF THE PRESIDENCY

Center for the Study of the Presidency is a non-profit, educational corporation, which I have headed as President and Chief Executive Officer for the past 15 years.

During these years members of the United States Senate who have participated in this Center's programs have included Bentsen, Chafee, Ervin, Hawkins, Huddleston, Humphrey, Inouye, Kassebaum, Lugar, Moynihan, Pell, Randolph, Stevenson, Taft, Tower, and Warner. One of your former colleagues, George McGovern, will be addressing this Center's Fifteenth Annual Student Symposium three weeks hence. Two of your former colleagues, Stevenson and Taft, are authors of the two lead articles in the current issue of the Center's Presidential Studies Quarterly which I am holding in my hand.

The Quarterly was recently cited by the American Historical Association as having more significant articles on the United States since 1945 than any other journal. Last year only one author, Edwin Meese III, had his writings published in three issues of the Quarterly. Mr. Meese has been commissioned to do a major article on separation of powers doctrine for one of the 1984 issues of the Quarterly. It is the considered judgment of the Quarterly's Board of Editors and myself that Mr. Meese is one of the most knowledgeable and articulate students on the Presidency in the Nation today.

During the past three years I have had many opportunities to discuss executive branch organization and policies with Mr. Meese. He is extremely well read in history, political science, and law. He came to the White House with an impressive record of the study and teaching of law at the University of California at Berkeley and the University of San Diego. He became a leading educator on the administration of criminal justice. Professor Meese, as Director of the Center for Criminal Justice Policy and Management at the University of San Diego, pioneered in criminal justice educational and training programs.

Mr. Meese is both an inspiring teacher and able administrator. In particular I admire the detail, dimensions, and perspective of his views on the Presidency, on separation of powers doctrine, and on federalism. By his creation of the cabinet councils he did more than any other persons of recent date to revitalize the Cabinet as an effective instrument of government. As the Cabinet administrator during the past three years he performed a valuable service. Mr. Meese would continue to have a salutary effect on Cabinet deliberations. He appreciates the need for good interdepartmental relations, and he would be a constructive force in those relationships, as well as within his own Department.

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For my part I realize that there are those who believe the position of Attorney Genearl should be completely apolitical. But I do not believe it can be any more than the Office of the President itself. Nonetheless, I do believe that such organizations as the American Civil Liberties Union, the NAACP Legal Defense and Educational Fund, and the Leadership Conference on Civil Rights would come to admire Mr. Meese for his perspective and vigor as the Nation's chief law enforcement officer.

Further, I believe the Senate itself, which has sponsored laudable legislation to redress the balance between the forces of law and the lawless, would wholeheartedly support Mr. Meese's efforts in this vital area. Although critics of the Department of Justice have expressed concern on many complex economic and social issues ranging from antitrust policies to freedom of information, Mr. Meese, I believe, would approach these issues both with objectivity and humanity. Mr. Meese brings considerable perspective to such issues. For example as regards one of this Center's volumes, The Presidency and Information Policy, Mr. Meese has written, "The framers of the American Constitution and those who placed the new government in operation appreciated the needs both for information and security. The principles recognized then are as true today. Information, understanding, and trust continue to constitute a vital triad in our republican form of government."

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Members of the Committee on the Judiciary, it is my hope that, with all due care, concern, and dispatch, you will recommend to your colleagues in the Senate the confirmation of the appointment of Mr. Meese as the Attorney General of the United States.

Thank you for the opportunity to share these views with you.

The CHAIRMAN. The next speaker—if you will tell us your name and where you are from, please.

Mr. HUGHES. Mr. Chairman and fellow committee members, I am Johnny Hughes, a lieutenant with the Maryland State Police in Pikesville, MD, and I am also chapter president of the National Troopers Coalition.

The National Troopers Coalition is composed of State police and highway patrol organizations throughout the great United States. Our membership is composed of approximately 40,000 troopers, composed of all ranks, trooper through lieutenant colonel.

The CHAIRMAN. Excuse me just a minute. Were you listed on this list of people to testify?

Mr. BALDWIN. Mr. Chairman, he was not listed. We lost two of our regular members; they had to leave. They were out of time——

The CHAIRMAN. Which ones did you lose, so I can mark them off?

Mr. BALDWIN. Mr. Ordway Burden and Chief William Brierley, of Newark, DE, past president of the Association of Chiefs of Police.

The CHAIRMAN. Now, who are the two?

Mr. BALDWIN. This is panel 2, and Chief William Brierley, past president of the State Association of Chiefs of Police, could not stay; and Mr. Ordway Burden of New York City, the president of the Law Enforcement Assistance Foundation—neither one of them could stay.

The CHAIRMAN. I see. So you are substituting this gentleman for one of them?

Mr. BALDWIN. Yes.

The CHAIRMAN. Do you have another one who is substituting for the other one who cannot be here?

Mr. BALDWIN. No; that will be it.

The CHAIRMAN. Now his name is——

Mr. BALDWIN. Lt. Johnny Hughes.

The CHAIRMAN. Lieutenant Hughes, we are glad to have you here, and please proceed.

Mr. BALDWIN. He is representing the National Troopers Coalition. He is president of the Maryland chapter, but he is representing the National Troopers Coalition.

The **Chairman**. Fine. You may proceed.

Mr. **Hughes**. We feel Edwin Meese's track record speaks for itself. With his caliber of credibility, integrity, and positive posture on crime, the National Troopers Coalition praises his efforts and highly endorses him for the position of U.S. Attorney General.

Thank you, Mr. Chairman and members of the committee.

The **Chairman**. Thank you very much. We are pleased to have you with us, and you are now dismissed any time you wish.

Mr. Baldwin?

Mr. **Baldwin**. Thank you, Mr. Chairman and members of the committee.

We appreciate the opportunity to comment on the President's nomination of the Honorable Edwin Meese III to be Attorney General of the United States.

The National Law Enforcement Council, of which I am executive director, is supportive of a strong law enforcement policy for our law enforcement and criminal justice community, and it is for this reason that we come before you today to strongly endorse the President's choice for replacement of Attorney General William French Smith, who has announced his desire to return to private life.

Now, the council is composed of the executive heads of 12 of the principal national law enforcement organizations, with nationwide membership. Mr. Ordway Burden, of New York City, is the chairman. Through these organizations, we reach somewhere in the neighborhood of perhaps 300,000 law enforcement officers, and perhaps as much as 90 percent of the organized law enforcement—that is, the national organizations.

Members of the council are Law Enforcement Assistant Foundation; Victims' Assistance Legal Organization; Society of Former Special Agents of the FBI; Association of Federal Investigators; International Union of Police Associations; Fraternal Order of Police; National Troopers Coalition; National Association of Police Organizations; National District Attorneys Association; FBI National Academy Associates; Federal Criminal Investigators Association, and the National Sheriffs Association.

Several of the executives of the member organizations are here with me today to testify. Others will offer separate statements for their organizations in the form of submitted testimony and letters of support.

We were organized 5½ years ago as an umbrella group of interested executives in the law enforcement/criminal justice community, sharing similar interests in what is happening at our Federal Government level that directly impacts on us.

Senator **Hatch**. Without objection, we will place all those letters and other statements in the record.

Mr. **Baldwin**. We meet for luncheon six times a year on the call of our chairman. We meet with prominent leaders in the legislative, executive, and judicial branches of our Federal Government, as well as leading law enforcement/criminal justice officials.

Our membership keeps informed on top issues affecting them and independently takes action to support or oppose legislation they think is of particular concern to their respective membership.

The council does not set policy or suggest positions for the individual members of the council. I think this is important, because it it not altogether uncommon, however, that we find all the members in agreement on matters that directly affect them or on matters they think they are qualified to speak about.

That is why when each member of the council, the 12 that I just mentioned, was polled, they had no problem in agreeing on their support for the President's nomination of Ed Meese to be Attorney General of the United States. The Attorney General is the highest law enforcement officer in the country, and we think the President has tapped the right man for the job.

Mr. Meese has served the President well in his present capacity as his trusted counselor for the past 3 years. Ed Meese was President Reagan's chief of state during his 8 years as Governor of California. His professional career includes a distinguished record as lawyer, public official, business executive, and educator, and we like to think, especially, a most distinguished career in law enforcement.

The point is, Mr. Chairman and members of the committee, Mr. Meese is highly qualified for this highest of law enforcement positions. Soon after he became a lawyer 25 years ago, he was appointed deputy district attorney in Alameda County, CA. He served as a trial lawyer for 8 years. During this time he handled major litigation and investigation. He was also legal advisor to the county grand jury and represented the State district attorneys and peace officers associations before the California Legislature.

We point out also, Mr. Chairman, that Mr. Meese's fine qualifications for the highest law enforcement office in the land includes serving as vice chairman of the California Organized Crime Control Commission. He is also a member of the American Bar Association's Criminal Law Section Committee on the Future.

On the academic side, we point out the nominee's one-time position as a part-time faculty member for the school of law at UCLA. He has lectured widely on such legal topics as "The Responsibility of the Legal Profession to Provide Services to the Poor" and "Reform of the Justice System."

In 1977, Mr. Meese was named professor of law at the University of San Diego and served as director of the law school's center for criminal justice policy and management.

The committee has been thoroughly briefed on Mr. Meese's formal education and the other important aspects of his fine qualifications for the highest law enforcement job in the land.

There is no better supporter of the President and his strong views on law enforcement than Ed Meese. He is the man for the job of Attorney General of the United States, and we urge this committee's endorsement of the nomination, and the earliest possible confirmation of the candidate by the U.S. Senate.

Mr. Chairman, I have several statements which, with your permission, I would like to include at this point in the printed hearing record, immediately following our testimony.

The **Chairman**. Without objection, they will follow your statement.

Mr. **Baldwin**. May I just say that the first one is of the president of the Law Enforcement Assistance Foundation and the chairman of the National Law Enforcement Council, Mr. Ordway Burden, who is a private citizen who donates considerable funds and time to law enforcement and is well known throughout the law enforcement community.

The other is a statement by Mr. Frank Carrington, executive director of the Victims' Assistance Legal Organization, and he is well known to this committee. I think that everyone knows that he is executive director of this organization and is a prominent lawyer and author on victims' rights.

Then, third, I have a letter of support from the Association of Federal Investigators' national president, Mr. Richard Kusserow, on behalf of the AFI. Mr. Kusserow is also inspector general of the Department of Health and Human Services.

Mr. Chairman, I appreciate this opportunity to testify on behalf of the council and for the vast majority of the law enforcement/criminal justice practitioners in this country, and it is a great honor to have this opportunity to endorse Ed Meese.

The CHAIRMAN. Mr. Baldwin, we are glad to have you here, and we thank you for your statement.

[Prepared statements follow:]

TESTIMONY OF

DONALD BALDWIN, EXECUTIVE DIRECTOR

NATIONAL LAW ENFORCEMENT COUNCIL

BEFORE THE SENATE JUDICIARY COMMITTEE

FRIDAY, MARCH 2, 1984

ON THE NOMINATION OF

THE HONORABLE EDWIN MEESE, III

TO BE

ATTORNEY GENERAL OF THE UNITED STATES

Thank you Mr. Chairman and members of the committee for this opportunity to comment on the President's nomination of The Honorable Edwin Meese, III, to be Attorney General of the United States. The National Law Enforcement Council, of which I am executive director, is supportive of a strong law enforcement policy for our law enforcement and criminal justice community. It is for this reason that we come before you to strongly endorse President Reagan's choice for replacement of Attorney General William French Smith who has announced his desire to return to private life.

The Council is composed of the executive heads of twelve of the principal national law enforcement organizations with nation-wide membership. Mr. Ordway P. Burden, of New York, is the chairman. Through these organizations we reach approximately 300,000 law enforcement officers and perhaps as much as 90 percent of organized law enforcement. Members of the Council are: Law Enforcement Assistance Foundation, Victims' Assistance Legal Organization, Society of Former Special Agents of the F.B.I., Association of Federal Investigators, International Union of Police Associations, Fraternal Order of Police, National Troopers Coalition, National Association of Police Organizations, National District Attorneys Association, F.B.I. National Academy Associates, Federal Criminal Investigators Association, and the National Sheriff's Association.

Several of the executives of member organizations are here to testify with us. Others will offer separate statements for their organizations in the form of submitted testimony and letters of support.

We were organized five and a half years ago as an umbrella group of interested executives in the law enforcement/criminal justice community sharing similar interests in what is happening at our federal government level that directly impacts on us. We meet for luncheons six times a year and on the call of our chairman. We meet with prominent leaders in the legislative, executive, and judicial branches of our federal government, as well as leading law enforcement/criminal justice officials. Our membership keeps informed on top issues effecting them and independently takes action to support or oppose legislation they think is of particular concern to their respective membership. The Council does not set policy or suggest positions for the individual members of the Council.

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Mr. Meese has served the President well in his present capacity as his trusted Counsellor for the past three years. Ed Meese was President Reagan's Chief of staff during his eight years as Governor of California. His professional career includes a distinguished record as a lawyer, public official, business executive and educator; and we like to think, especially, a most distinguished career in law enforcement.

The point is, Mr. Chairman and members of the committee, Mr. Meese is highly qualified for this highest of law enforcement positions. Soon after he became a lawyer 25 years ago, he was appointed Deputy District Attorney in Alameda County, California. He served as a trial lawyer for eight years. During this time he handled major litigation and investigations. He was also legal advisor to the county grand jury and represented the State District Attorney's and Peace Officer's Associations before the California legislature.

We point out also, Mr. Chairman, that Mr. Meese's fine qualifications for the highest law enforcement office in the land includes serving as Vice Chairman of the California Organized Crime Control Commission. He is also a member of the American Bar Association's Criminal Law Section "Committee on the Future".

On the academic side we point out the nominee's one time position as a part time faculty member of the School of Law at UCLA. He has lectured widely on such legal topics as "The Responsibility of the Legal Profession to Provide Services to the Poor" and "Reform of the Justice System". In 1977 Mr. Meese was named Professor of Law at the University of San Diego and served as the Director of the Law School's Center for Criminal Justice Policy and Management.

The committee has been thoroughly briefed on Ed Meese's formal education and the other important aspects of his fine qualifications for the highest law enforcement job in the land. There is no better trusted supporter of the President and his strong views on law enforcement than Ed Meese. He is the man for the job of Attorney General of the United States. We urge this committee's endorsement of the nomination and the earliest possible confirmation by the United States Senate.

Mr. Chairman I have several statements which with your permission we would like to have inserted at this point in the printed hearings immediately following our testimony. The first is a statement by Mr. Frank Carrington, executive director of the Victims' Assistance Legal Organization, and prominent lawyer and author on victims' rights. The second is the letter of support from the Association of Federal Investigator's national president Mr. Richard Kusserow on behalf of the AFI. Mr. Kusserow is also Inspector General of the Department of Health and Human Services.

TESTIMONY OF

MR. ORDWAY P. BURDEN, PRESIDENT
LAW ENFORCEMENT ASSISTANCE FOUNDATION, AND
CHAIRMAN, NATIONAL LAW ENFORCEMENT COUNCIL

I am grateful to this Committee for the opportunity to add my voice to those who support President Reagan's nomination of The Honorable Edwin Meese, III to become Attorney General of the United States. I speak as a private citizen, one who has spent much of his adult life in assisting the men and women who are on the front lines of law enforcement.

At present I am president of the Law Enforcement Assistance Foundation, which makes grants for projects to educate the public in crime prevention and to foster cooperation among law enforcement agencies and associations. I am also founder and chairman of the National Law Enforcement Council, a coalition of 12 national associations representing 300,000 people in our criminal justice system.

Edwin Meese will, I believe, become a distinguished Attorney General. As Counsellor to the President, and earlier as a top aide when President Reagan was Governor of California, Mr. Meese has demonstrated efficiency, managerial skill and legal acumen that will serve him well as head of the Department of Justice.

As I am sure this Committee is aware, Mr. Meese was a vigorous and effective prosecutor in the Alameda County District Attorney's office in California during a trying time for law enforcement. In dealing with the civil disturbances and riots of the Vietnam War era in a firm but even-handed manner, he displayed the qualities that are essential in the office of the Attorney General of the United States.

I cannot speak for the entire field of law enforcement, but I think there is not much doubt that the overwhelming majority of police officers, prosecutors and criminal court officials will welcome the appointment of Mr. Meese. His extensive knowledge of the criminal justice system and his demonstrated concern for this difficult task make him well qualified to assume the most important law officer position in the nation.

For these reasons I am pleased to support the nomination of Edwin Meese III and I urge the Committee to act favorably upon it. Thank you.

STATEMENT OF FRANK CARRINGTON, EXECUTIVE DIRECTOR, VICTIMS ASSISTANCE LEGAL ORGANIZATION, (VALOR), BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE, IN THE MATTER OF THE CONFIRMATION OF THE HONORABLE EDWIN L. MEESE, III, AS ATTORNEY GENERAL OF THE UNITED STATES.

Mr. Chairman: My name is Frank Carrington; I reside at 4530 Oceanfront, Virginia Beach, Virginia 23451. I am the Executive Director of the Victims Assistance Legal Organization (VALOR), Virginia Beach, Virginia. VALOR is a national, not-for-profit public interest law firm which serves as a clearinghouse of information for attorneys who represent victims of crime.

Briefly, by way of personal backround, I am an attorney (Ll. B., University of Michigan, 1960; Ll. M., Northwestern University, 1970). I am a member of the Bar of the Supreme Court of the United States, and of the States of Virginia, Illinois, Ohio and Colorado (the latter three inactive, non-resident status). With regard to criminal justice activity, I have served as Assistant Director, Policy Coordination, Criminal Justice, Reagan/Bush Transition Team; Member, Attorney General's Task Force on Violent Crime (1981); Member, President Reagan's Task Force on Victims of Crime (1982); and I am currently a Member of the Advisory Board of the National Institute of Justice, United States Department of Justice. I am also the Chairman of the Victims Committee of the American Bar Association.

Mr. Chairman, I mention these activities only to put my testimony in support of Mr. Meese's confirmation in perspective. I have known Ed Meese personally and professionally for about fifteen years. It would be redundant for me to reiterate all of the good things that you have heard about the Attorney General Designate: his brilliant legal acumen; his dedication, based on years of personal experience, to the improvement of the criminal justice system; his commitment to restoring a balance to the same system whereby the average citizen can go about his or her business in relative freedom from criminal harm. I will confine my remarks to one facet of Ed Meese's career in criminal justice that has received far too little attention. This is the fact that Mr. Meese is the preeminent advocate, in his own quiet way, of the rights of victims of crime in this country today.

Ed Meese has never sought personal publicity; he has become a "household word" almost in spite of his wishes. Therefore his detractors are, presumably in good faith, free to hurl their brickbats at him, which Mr. Meese accepts with the same aplomb that he accepts everything else. If his confirmation hearings serve no other purpose, they present an opportunity for his admirers, those of us who have worked with and for him, to present his side of the story for the record.

My characterization of Ed Meese as "the preeminent victims' advocate" in the country is not overstatement. He has received far too little credit for his accomplishments and activities in this area. Mr. Meese as a public official, Counsellor to the President, was the guiding force behind such initiatives as the President's proclamations of Victims' Rights Week in 1982, 1983 and presumably, 1984. (Such proclamations were, in the past, adamantly refused by the prior Administration). Mr. Meese's "brain child" was the President's Task Force on Victims of Crime, chaired by the Honorable Lois Haight Herrington, the Report of which Task Force will be the "Bible" of victim advocates for years to come.

Through Mr. Meese's good offices, Mrs. Herrington has now been appointed Assistant Attorney General of the United States, charged specifically with the implementation of the Task Force's recommendations. Additionally, Mr. Meese was instrumental in appointing the Honorable D. Lowell Jensen, former District Attorney of Alameda County, California (and a Democrat), as Assistant Attorney General of the United States, Criminal Division, now Associate Attorney General of the United States. A fact that has escaped public attention is that Mr. Jensen, while District Attorney of Alameda County, pioneered the first, eminently successful, victim/witness program in the country.

Thus Mr. Meese's record, as a public figure, in the area of crime victims' rights is unassailable. One could, however, speculate that Mr. Meese's activity on behalf of crime victims evolved only when he became Counsellor to the President and recognized it as a "hot" political issue. Nothing could be farther from the truth; and this is the principal aspect of my testimony. Ed Meese was committed to doing something constructive about the plight of crime victims long before he ascended to high public office. To give credence to this I submit the following:

Item: On a personal note, Mr. Meese contacted me in May of 1980, six months before the Presidential election, and advised me that when (not if) Ronald Reagan was elected to the Presidency, the rights of crime victims would be given the highest priority. As a result of this, then-candidate Reagan established an Advisory Task Force on the rights of crime victims. I had the honor of chairing this Task Force, which, incidentally, was bi-partisan, Republicans and Democrats alike served on the Task Force.

Item: In 1979, Mr. Meese in his then-capacity as Director of the Institute for Criminal Justice Policy and Management at San Diego State Law School, convened the first Seminar on third party lawsuits by victims against custodial officials for negligent release of prisoners.

Item: Mr. Meese was a founding director of the Victims Assistance Legal Organization (VALOR) and served on VALOR's Board of Directors until he became Counsellor to the President.

Mr. Chairman, I raise these points to demostrate that Ed Meese is no "Johnny-Come-Lately" to the victims' movement. Indeed, his commitment to improving the criminal justice system, and in particular to improving the lot of crime victims was manifested long before he came into his high national office.

In summary, Mr. Chairman, Mr. Meese is not only qualified for the position of Attorney General of the United States, but it may well be that he is the single most qualified person in the country today to serve in this important office. His long-standing commitment to the rights of victims of crime is but one measure of his qualities that should mandate confirmation by the Senate of the United States.

With thanks for such consideration as you may give to this Statement, I am,

Respectfully,

Frank Carrington,
Attorney and Counsellor at Law,
Executive Director, Victims
Assistance Legal Organization,
Virginia Beach, Virginia.

ASSOCIATION OF FEDERAL INVESTIGATORS
National Office
810 Eighteenth Street, N.W.
Sixth Floor
Washington, D.C. 20006 (202) 347-5500

AFI
1612 K Street, N.W., Suite 506
Washington, D.C. 20006

The Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Association of Federal Investigators, now in its 27th year of representing the investigative profession, has carefully reviewed the credentials of Edwin Meese, III to be Attorney General of the United States.

Mr. Meese's background as a district attorney, founder and director of the Center for Criminal Justice Policy and Management, professor of criminal justice at the University of San Diego Law School, along with his demonstrated support for the law enforcement profession, has earned him AFI's unqualified support.

With respect, the Association of Federal Investigators urges your committee to expeditiously report out Mr. Meese's nomination for Senate confirmation.

Sincerely yours,

Richard P. Kusserow
President, Association of
Federal Investigators

472-3148

The **Chairman**. Our next speaker will be Mr. Don Bekurs, vice chairman of the Regional Information Sharing Systems Directors Association, Nashville, TN. In other words, this is the Regional Organized Crime Information Center at Nashville, known as ROCIC.

Mr. Bekurs, I had the pleasure of visiting your center on February 8, and I was deeply impressed with the great work that you and the others are doing there. I just want to commend you, and we are very pleased to have you here today.

Mr. **Bekurs**. Thank you, Mr. Chairman. I appreciate your very kind remarks.

The **Chairman**. You may proceed now.

Mr. **Bekurs**. Mr. Chairman and distinguished members of the committee, my name is William M. Bekurs. I am the director of the Regional Organized Crime Information Center, which is called ROCIC, with offices in Nashville, TN

ROCIC is the first of six multistate regional intelligence projects, organized for the purpose of combating felony crimes through the exchange of information between member State and local law enforcement agencies.

These projects have recently been officially named Regional Information-Sharing Systems, or RISS projects.

I am also the vice chairman of the RISS Project Directors Association.

The membership of these six projects now includes almost 1,200 State and local law enforcement agencies in all 50 States. Our review of Mr. Edwin Meese's background in law enforcement and our study of his philosophy of criminal justice convinces us that he is a strong advocate of strict but evenhanded law enforcement and that he believes the responsibility of law enforcement should be assumed to the maximum extent that is appropriate at the local level, where it can be most fair, efficient, and effective.

In recent years, the sophisticated criminal who commits crimes that are essentially the responsibility of local governments to prosecute has begun to operate in a manner that often requires the cooperation of several local law enforcement agencies to make a case sufficient to break up crime rings and result in conviction. With 8 years' experience as a prosecutor, Mr. Meese is very familiar with this problem.

The single item most necessary in a joint effort between local law enforcement agencies is the exchange of intelligence information required to make arrests and break up the traveling or organized criminal operation. In the distant past, the Federal Government has provided direct, inkind assistance to local law enforcement agencies, primarily through the Federal Bureau of Investigation, which furnished training, intelligence services, and on occasion, advice, counsel, and direct assistance.

Because of budget restraints and other reasons, direct, inkind Federal assistance to local law enforcement agencies from Federal law enforcement agencies has become less and less, year by year.

For example, as recent as 1982, on the list of 19 FBI program priorities, the programs that provide assistance to local law enforcement were relegated to positions 16, 17, and 18. Specifically, the FBI recently cut the Field Police Training Program, traditionally provided to local and State agencies, by 50 percent of that in previous years. The vacuum left by the loss of Federal assistance through active law enforcement agencies such as the FBI, Drug Enforcement Administration, and Coast Guard, had to be filled by the local law enforcement agencies themselves, or the traveling and organized criminals would have had a tremendous advantage in their freedom of operation. This vacuum has been filled in part by the RISS projects which are supported by Federal grants that provide technical assistance, advice, intelligence-sharing services, and other help, so that the local police officer is made much more effective in the fight against crime.

Although the record of accomplishment for the RISS projects has been outstanding, there are some in the Justice Department who would prefer that these projects be eliminated and the money used to support them be diverted to other purposes not directly related to the enforcement of the law or the apprehension of criminals.

Because of Mr. Meese's background and experience in law enforcement, we believe he will agree with the local and State authorities responsible for the operation of the RISS projects, that the loss of these projects by withdrawing or reducing Federal funds for their support, would be disastrous to local law enforcement and its ability to combat crimes committed by the traveling or organized criminals.

While the primary objective of the RISS projects is the apprehension of traveling or organized criminals, our members are equally concerned about the prevention of crime and the protection of crime victims. Our examination of Mr. Meese's record in this regard convinces us that Mr. Meese is equally concerned about the victims of crime, as well as the prevention of criminal acts.

Those of us who daily deal with the criminal justice system are acutely aware of its shortcomings. As a law professor and student of the criminal justice system, Mr. Meese has devoted much time and research to these problems. The lack of uniformity in sentencing, the shortage and ineffectiveness of prison and detention facilities, the slow and cumbersome process of indictment and trial, and the ever-tightening budgets that cut into available money, are some of the principal problems.

We believe that Mr. Meese has the training, experience, intelligence, and most of all, the proper motivation, to examine the criminal justice system and make the short-term and long-term adjustments that are reasonable and necessary to make it capable of dealing with the magnitude of our criminal justice problems.

We believe also that his outstanding qualities of leadership will result in equally outstanding management of the Department of Justice.

Mr. Chairman and distinguished members of the committee, we commend the President for his nomination of Mr. Edwin Meese to be the Attorney General of the United States, and we not only recommend, but we urge this committee and the U.S. Senate to confirm the appointment of Mr. Meese at the earliest possible date, so that he may begin immediately to deal with the pressing issues of that office.

Thank you.

The **Chairman**. Thank you very much, Mr. Bekurs. We appreciate your presence here and your splendid statement.

Mr. Bekurs. Thank you, sir.

The Chairman. Now, the next witness is?

Mr. Boyd. Mr. Chairman, my name is Lt. Richard Boyd. I am the national president of the Fraternal Order of Police.

The Chairman. You may proceed, Mr. Boyd.

Mr. Boyd. Thank you, Mr. Chairman.

I represent 167,000 law enforcement officers in this country, Mr. Chairman, the largest national police organization in the United States.

We stand in support of the nomination of Edwin Meese as Attorney General of the United States.

Edwin Meese III has a long record as a law and order advocate. The Fraternal Order of Police has personal knowledge that Mr. Meese has often given counsel to the President, strongly favoring a prolaw enforcement posture in this country. And with Mr. Smith stepping down, President Reagan did not hesitate to immediately nominate Mr. Meese to this post.

Maintaining the continuity of an aggressive Attorney General's Office and bolstering the work of the Justice Department's war on crime was uppermost in President Reagan's mind in this selection.

The Fraternal Order of Police represents the cop on the street. Mr. Meese recognizes that the police are involved in a war on those streets, Mr. Chairman, a war which sometimes is hard to win. But Edwin Meese has vowed to help, to take the same stand as the President of the United States, to protect his soldiers on the line, by guarding us against the unscrupulous defense lawyer, by attempting to prevent frivolous criminal and civil lawsuits designed to focus the attention of the public and the courts away from the illegal acts of criminals, and preventing the automatic exclusion of pertinent evidence in the trial due to absurd technicalities, when obtained by the officer in good faith—something this distinguished body has passed and sent to the House of Representatives.

Mr. Meese, as the chief law enforcement officer, knows the priority to give to crime on our streets. He knows the priority to give the war on drug traffic and organized crime. Meese knows that the victims of crime have just as many rights as the criminal, and he would seek additional victims' remedies in the Congress.

Edwin Meese III would give the war on crime the priority that our citizens have been giving it for years, Mr. Chairman, always our No. 2 problem. After all, we always have one problem more pressing than crime—foreign policy, the economy, nuclear disarmament, and so on—but our people always said to be safe in their homes was always their No. 2 concern.

The Fraternal Order of Police wants the President of the United States to give Edwin Meese III and the war on crime his No. 2 priority. The FOP wants the Congress of the United States to give the war on crime the No. 2 priority. We want State, county, municipal, and other Federal governing agencies to join with us and Mr. Meese to fund the war on crime with the No. 2 priority.

In case this honorable body has to be reminded, the courts are overtaxed; the Federal and State prison systems are jampacked; the drug problems seek epidemic proportions, and we in law enforcement are just scratching the surface. Organized crime and white collar crime go largely unchecked, because we are simply not giving crime our No. 2 priority.

I do not think anyone really doubts that Edwin Meese can do the job of Attorney General, but are we going to give him the tools necessary to make a significant change in how the public now perceives their criminal justice system—as bureaucratic, cumbersome, unprotective, constitutionally liberal, and generally not responsive to the real world of crime on our streets.

Are we going to assist Mr. Meese in the discharge of his duties so we can show the public some positive results to end this war on crime?

I suspect that Mr. Meese is not unlike the police at the local level. We not only have to worry about how and when to do our jobs, but we worry constantly about the side issues, Mr. Hatch, of civil liability, liberal courts, distressing budgets, and so on. But if Mr. Meese had the faith of this Congress legislative and financially, politics and an election year aside, he could do a great job in turning the course of crime in this Nation.

We ask your confirmation of Mr. Meese, but law enforcement also asks that we give him all the support necessary to do the important job asked of him.

The U.S. Senate has taken a stand in favor of the Comprehensive Crime Control Act, the good faith exceptions to the exclusionary rule, organized crime and labor racketeering, mandatory minimum sentencing, drug enforcement coordination, capital punishment. We in the Fraternal Order of Police will assist the Senate in the passage of these important tools for Mr. Meese.

We submit to the House of Representatives that these issues are not political and are not drawn down party lines. We submit that these bills will help all Americans and will get all Congressmen on the road to reelection, also.

Crime cannot be treated only politically. It must be treated by prevention, detection, enforcement, adjudication, and incarceration.

Edwin Meese has promised law enforcement to help with these basic tasks. The Fraternal Order of Police believes he deserves a chance to make a difference.

I thank you, and as a personal thing, Mr. Chairman, I am going to let my 167,000 members know that you and Mr. Hatch were diligent to listen to the concerns of law enforcement.

The CHAIRMAN. Thank you, and we are glad to have you with us, Mr. Boyd. I want to commend you and the Fraternal Order of Police for the great service you are rendering to this country.

[Prepared statements follow:]

SPEAKING IN FAVOR OF THE NOMINATION

THE GRAND LODGE, FRATERNAL ORDER OF POLICE

RICHARD A. BOYD

NATIONAL PRESIDENT

PARTICIPATING MEMBER, LAW ENFORCEMENT COUNCIL

ORDWAY P. BURDEN, CHAIRMAN

TESTIFYING: LIEUTENANT RICHARD A. BOYD
National President, Fraternal Order of Police
Route 1, Box 754
McLoud, Oklahoma 74851
405-523-1425
405-391-6819
405-236-4631

Lieutenant BOYD is a twenty (20) year veteran of the Oklahoma City Police Department. BOYD is President of the largest national police organization in the United States today; the Fraternal Order of Police is 167,000 law enforcement members strong.

TESTIMONY: Mr. Chairman

Honorable Members of this Distingusihed Committee,

I am RICHARD A. BOYD, National President of the Fraternal Order of Police, representing 167,000 law enforcement officers in this country. Membership in the Fraternal Order of Police consists of municipal police officers, county police and Sheriff's deputies, officers of State policing agencies, corrections officers, plus Federal agents and police; a strong cross-section of this nation's guardians of law and order.

WE STAND IN SUPPORT OF THE NOMINATION OF EDWIN MEESE III AS ATTORNEY GENERAL OF THE UNITED STATES.

EDWIN MEESE III has a strong record as a law and order advocate. The Fraternal Order of Police has personal knowledge that Mr. MEESE has often given counsel to PRESIDENT RONALD REAGAN strongly favoring a pro-law enforcement posture in this country, and with Mr. SMITH stepping down, PRESIDENT REAGAN did not hesitate to immediately nominate Mr. MEESE to the post.

Maintaining the continuity of an aggressive Attorney General's Office, and bolstering the work of the Justice Department on the war against crime, was uppermost in PRESIDENT REAGAN's mind in this selection.

The Fraternal Order of Police represents the cop working the streets of this nation. Mr. MEESE recognizes that the police are involved in a war on those streets; a war which, sometimes,is hard to win. But EDWIN MEESE has vowed to help - to take the same stand as the PRESIDENT of the UNITED STATES; to protect his soldiers on the line, by:

(1) guarding the police from unscrupulous defense attorney's;

(2) attempting to prevent frivolous criminal or civil lawsuits designed to focus the attention of the public and the courts away from the illegal acts of criminals; and

(3) preventing the automatic exclusion of pertinent evidence in a trial due to absurd technicalities when obtained by the officer in good faith. (Something this distinguished body has passed and sent to the House of Representatives.)

Mr. MEESE, as the Chief Law Enforcement Officer in the nation, knows the priority to give to crime on our streets; knows the priority to give the war on drug traffic and organized crime; MEESE knows that the victims of crime have just as many rights as the criminal and he would seek additional victims remedies in the Congress.

EDWIN MEESE III would give the war on crime the priority our citizens have been giving it for years - always our Number 2 problem. After all, we always have one problem more pressing than crime, i.e. foreign policy, the economy, nuclear disarmament, and so on, but our people have always said "to be safe in their homes" was always Number 2.

The Fraternal Order of Police wants the PRESIDENT of the United States to give EDWIN MEESE III and the war on crime his Number 2 priority. The FOP wants the Congress of the United States to give the war on crime a Number 2 priority. We want State, County, Municipal, and Federal governing agencies to join with us and Mr. MEESE to fund the war on crime with a Number 2 priority.

In case this Honorable Body has to be reminded, the Courts are overtaxed; the Federal and State prison systems are jamed-packed; the drug problems seek epidemic proportions and we in law enforcment are just scratching the surface; organized crime and white collar crime go largely unchecked; because we are simply not giving crime our Number 2 priority.

I don't think anyone here really doubts that EDWIN MEESE can do the job of Attorney General of the United States, but are we going to give him the tools necessary to make a significant change in how the public now perceives their criminal justice system; bureaucratic, cumbersome, unprotective, constitutionally liberal, and generally not responsive to the real world of crime on the streets. Are we going to assist Mr. MEESE in the discharge of his duties so we can show the public some positive results to win this war.

I suspect that Mr. MEESE is not unlike the police at the local level. We not only have to worry about how and when to do our jobs, but we worry constantly about the side issues of civil liability, liberal courts, distressing budgets, and so on; but if Mr. MEESE had the faith of this Congress, legislatively and financially, politics and an election year aside, he could do a great job in turning the course of crime in this nation.

We ask your confirmation of Mr. MEESE, but law enforcement also asks that we give him all the support necessary to do the important job asked of him. The UNITED STATES SENATE has taken a stand in favor of the COMPREHENSIVE CRIME CONTROL ACT: the "GOOD FAITH EXCEPTIONS TO THE EXCLUSIONARY RULE"; labor and organized crime RACKETEERING: MANDATORY MINIMUM SENTENCING; DRUG ENFORCEMENT COORDINATION. We in the Fraternal Order of Police will assist the SENATE in the passage of these important tools for Mr. MEESE. We submitt to the HOUSE OF REPRESENTATIVES that these issues are not political and are not drawn down party lines. We submitt that these bills willhelp all Americans and will get everyone on the road to re-election.

Crime cannot be treated politically; it must be treated by prevention, detection, enforcement, adjudication, and incarceration. EDWIN MEESE has promised law enforcement to help with these most basic of tasks. The Fraternal Order of Police believes he deserves a chance to make a difference. With the help of this Honorable SENATE, we can turn crime around.

STATEMENT OF WILLIAM M. BEKURS, JR., DIRECTOR, REGIONAL ORGANIZED CRIME INFORMATION CENTER NASHVILLE, TENNESSEE AND VICE-CHAIRMAN, RISS PROJECT DIRECTOR'S ASSOCIATION

Mr. Chairman and Members of the Committee, my name is William M. Bekurs. I am the Director of the Regional Organized Crime Information Center (ROCIC) with offices in Nashville, Tennessee. ROCIC is the first of six multi-state regional intelligence projects organized for the purpose of combating felony crimes through the exchange of information between member state and local law enforcement agencies. These projects have recently been officially named Regional Information Sharing Systems, or RISS Projects.

I am also the Vice-Chairman of the RISS Project Director's Association. The membership of these six projects, now includes almost 1,200 state and local law enforcement agencies in all 50 States.

Our review of Mr. Edwin Meese's background in law enforcement and our study of his philosophy of criminal justice convinces us that he is a strong advocate of strict but even-handed law enforcement and that he believes the responsibility of law enforcement should be assumed, to the maximum extent that is appropriate, at the local level, where it can be most fair, efficient and effective.

In recent years the sophisticated criminal who commits crimes that are essentially the responsibility of local governments to prosecute, has begun to operate in a manner that often requires the cooperation of several local law enforcement agencies to make a case sufficient to break up crime rings and result in conviction. With eight (8) years experience as a prosecutor, Mr. Meese is very familiar with this problem.

The single item most necessary in a joint effort between local law enforcement agencies is the exchange of intelligence information required to make arrests and break up the traveling or organized criminal operation.

In the distant past the Federal Government has provided direct in-kind assistance to local law enforcement agencies primarily through the Federal Bureau of Investigation which furnished training, intelligence services and on occasion advice, counsel and direct assistance.

Because of budget restraints and other reasons, direct in-kind federal assistance to local law enforcement agencies from federal law enforcement agencies has become less and less, year by year. For example, as recent as 1982 on the list of nineteen FBI program priorities, the programs that provide assistance to local law enforcement were relegated to positions 16, 17, and 18. Specifically, the FBI recently cut the field police training program, traditionally provided to local and state agencies, by 50% of that in previous years. The vacuum left by the loss of federal assistance through active law enforcement agencies such as the FBI, the Drug Enforcement Administration and the Coast Guard had to be filled by the local law enforcement agencies themselves, or the traveling and organized criminals would have had a tremendous advantage in their freedom of operation.

This vacuum has been filled, in part, by the RISS Projects which are supported by federal grants that provide technical assistance, advice, intelligence sharing services and other help so that the local police officer is made much more effective in the fight against crime.

Although the record of accomplishment for the RISS Projects has been outstanding, there are some in the Justice Department who would prefer that these projects be eliminated and the money used to support them be diverted to other purposes not directly related to the enforcement of the law or the apprehension of criminals. Because of Mr. Meese's background and experience in law enforcement, we believe he will agree with the local and state authorities responsible for the operation of the RISS Projects, that the loss of these projects by withdrawing or reducing federal funds for their support would be disastrous to local law enforcement and its ability to combat crimes committed by the traveling or organized criminal.

While the primary objective of the RISS Projects is the apprehension of traveling or organized criminals, our members are equally concerned about the prevention of crime and the protection of crime victims. Our examination of Mr. Meese's record in this regard convinces us that Mr. Meese is equally concerned about the victims of crime as well as the prevention of criminal acts.

Those of us who daily deal with the criminal justice system are acutely aware of its shortcomings. As a law professor and student of the criminal justice system, Mr. Meese has devoted much time and research to these problems. The lack of uniformity in sentencing, the shortage and ineffectiveness of prison and detention facilities, the slow and cumbersome process of indictment and trial, and the ever-tightening budgets that cut into available money are some of the principal problems.

We believe that Mr. Meese has the training, experience, intelligence and most of all the proper motivation to examine the criminal justice system and make the short term and long term adjustments that are reasonable and necessary to make it capable of dealing with the magnitude of our criminal justice problems. We believe also that his outstanding qualities of leadership will result in equally outstanding management of the Department of Justice.

Mr. Chairman and Members of the Committee, we commend the President for his nomination of Mr. Edwin Meese to be the Attorney General of the United States and we not only recommend, but we urge this Committee and the United States Senate to confirm the appointment of Mr. Meese at the earliest possible date so that he may begin immediately to deal with the pressing issues of that office.

The CHAIRMAN. Now, the next witness is?

Mr. VEICH. Mickey Veich.

The CHAIRMAN. Now, I believe you are taking the place of Mr. Robert R. Fuesel, aren't you?

Mr. VEICH. Yes, sir.

The CHAIRMAN. For the Federal Criminal Investigators Association.

Mr. VEICH. Yes, sir.

The CHAIRMAN. Do you live here in Washington?

Mr. VEICH. No, sir; I live in Chicago.

Mr. BALDWIN. Mr. Fuesel is the national president. He is also in Chicago, but he could not be here.

The CHAIRMAN. We are glad to have you here, and you may proceed now.

Mr. VEICH. Thank you, Chairman Thurmond and members of the committee.

My name is Mickey Veich. I am the congressional affairs officer for the Federal Criminal Investigators Association. I am appearing here on behalf of Robert R. Fuesel, our national president.

The FCIA is made up of agents representing more than 50 Federal enforcement agencies throughout not only the United States, but also the rest of the free world. The primary goal of the organization is simply to encourage a recognition that criminal investigation is a true and honorable profession. It is with that goal in mind that the executive board, acting on behalf of the general membership of the FCIA, wishes to place on the record its hearty and unqualified endorsement of counselor for the president, Edwin Meese III, for the Office of Attorney General of the United States.

Keeping in mind that the FCIA consists for the most part of criminal investigators who are not only college educated, but also wise and conditioned in the ways of the street, we sincerely feel that our organization's goals for law enforcement will be advanced substantially by the appointment of Counselor Meese as Attorney General for the following reasons:

First, his personal honor and integrity, which he possesses to the highest degree and has demonstrated consistently in public and private life.

Second, his dedication to strenuous but equitable enforcement of the laws, as evidenced by his exemplary record as a deputy district attorney in Alameda County, CA.

Third, his close association with the President of the United States and with the President's stated goals for law enforcement.

Fourth, his maintenance throughout public life of his contacts with law enforcement officers, which has resulted in a universal respect for him throughout the law enforcement community.

Fifth, his cooperation with and aid to law enforcement officials, which promises that his confirmation will enhance the law enforcement liaison effort.

This endorsement is based upon the collective experience of those criminal investigators who are charged with the responsibility for enforcing our Nation's laws.

You here today all know the type of dedicated criminal investigators of whom I speak. We in the profession most commonly refer to them with a certain degree of reverence, as "those in the field."

They are the men and women who spend their entire working days and nights in the streets of our great country; they are the front line troops in the day-to-day battle on behalf of the people of this country against those who are bent on criminal activities.

We know that all of you here today support the daily enforcement efforts of these agents. Lest there be any doubt, we are before you now to state unequivocally that those field troops support fully the nomination of Counselor Meese.

We respectfully suggest that Mr. Meese will bring to the office of the Attorney General not merely a wealth of law enforcement experience, but also a sense of justice coupled with an unquenchable desire for fighting crime. Furthermore, we feel that Counselor Meese, though an individual who will be tough on crime and criminals, is also a sensitive man whose compassion for the victims of criminal activity is well known. He is the cofounder of the Crime Victims' Advocacy Institute.

Mr. Chairman and members of the committee, we do not make this endorsement lightly; our collective conscience will not permit a light decision in this regard. We are making this endorsement because we sincerely believe, based on our experience and Mr. Meese's record, that his confirmation for the Office of Attorney General of the United States would be of benefit not only to the Federal enforcement effort, but to the entire law enforcement community of the United States.

Thank you.

The CHAIRMAN. Thank you very much. We appreciate your statement, and we wish to thank you for attending this hearing and testifying.

[The following was received for the record:]

Federal Criminal Investigators Association

TESTIMONY OF ROBERT R. FUESEL, NATIONAL PRESIDENT, FEDERAL CRIMINAL INVESTIGATORS ASSOCIATION, AS GIVEN BY MICKEY VEICH, CONGRESSIONAL AFFAIRS OFFICER, FEDERAL CRIMINAL INVESTIGATORS ASSOCIATION

THANK YOU CHAIRMAN THURMOND AND MEMBERS OF THE COMMITTEE; MY NAME IS MICKEY VEICH. I AM THE CONGRESSIONAL AFFAIRS OFFICER FOR THE FEDERAL CRIMINAL INVESTIGATORS ASSOCIATION. I AM APPEARING HERE ON BEHALF OF ROBERT R. FUESEL, OUR NATIONAL PRESIDENT.

THE FCIA IS MADE UP OF AGENTS REPRESENTING MORE THAN 50 FEDERAL ENFORCEMENT AGENCIES THROUGHOUT NOT ONLY THE UNITED STATES, BUT ALSO THE REST OF THE FREE WORLD. THE PRIMARY GOAL OF THE ORGANIZATION IS SIMPLY TO ENCOURAGE A RECOGNITION THAT CRIMINAL INVESTIGATION IS A TRUE AND HONORABLE PROFESSION. IT IS WITH THAT GOAL IN MIND THAT THE EXECUTIVE BOARD, ACTING ON BEHALF OF THE GENERAL MEMBERSHIP OF THE FCIA, WISHES TO PLACE ON THE RECORD ITS HEARTY AND UNQUALIFIED ENDORSEMENT OF COUNSELOR FOR THE PRESIDENT, EDWIN MEESE, III, FOR THE OFFICE OF ATTORNEY GENERAL OF THE UNITED STATES.

KEEPING IN MIND THAT THE FCIA CONSISTS FOR THE MOST PART OF CRIMINAL INVESTIGATORS WHO ARE NOT ONLY COLLEGE EDUCATED, BUT ALSO WISE AND CONDITIONED IN THE WAYS OF THE STREET, WE SINCERELY FEEL THAT OUR ORGANIZATION'S GOALS FOR LAW ENFORCEMENT WILL BE ADVANCED SUBSTANTIALLY BY THE APPOINTMENT OF COUNSELOR MEESE AS ATTORNEY GENERAL FOR THE FOLLOWING REASONS:

1. HIS PERSONAL HONOR AND INTEGRITY, WHICH HE POSSESSES TO THE HIGHEST DEGREE, AND HAS DEMONSTRATED CONSISTENTLY IN PUBLIC AND PRIVATE LIFE;

2. HIS DEDICATION TO STRENUOUS BUT EQUITABLE ENFORCEMENT OF THE LAWS, AS EVIDENCED BY HIS EXEMPLARY RECORD AS A DEPUTY

DISTRICT ATTORNEY IN ALAMEDA COUNTY, CALIFORNIA;

3. HIS CLOSE ASSOCIATION WITH THE PRESIDENT OF THE UNITED STATES, AND WITH THE PRESIDENT'S STATED GOALS FOR LAW ENFORCEMENT;

4. HIS MAINTENANCE THROUGHOUT PUBLIC LIFE OF HIS CONTACTS WITH LAW ENFORCEMENT OFFICERS WHICH HAS RESULTED IN A UNIVERSAL RESPECT FOR HIM THROUGHOUT THE LAW ENFORCEMENT COMMUNITY; AND

5. HIS COOPERATION WITH, AND AID TO LAW ENFORCEMENT OFFICIALS, WHICH PROMISES THAT HIS CONFIRMATION WILL ENHANCE THE LAW ENFORCEMENT LIAISON EFFORT.

THIS ENDORSEMENT IS BASED UPON THE COLLECTIVE EXPERIENCE OF THOSE CRIMINAL INVESTIGATORS WHO ARE CHARGED WITH THE RESPONSIBILITY FOR ENFORCING OUR NATION'S LAWS. YOU HERE TODAY ALL KNOW THE TYPE OF DEDICATED CRIMINAL INVESTIGATORS OF WHOM I SPEAK. WE IN THE PROFESSION MOST COMMONLY REFER TO THEM, WITH A CERTAIN DEGREE OF REVERENCE, AS THOSE IN "THE FIELD". THEY ARE THE MEN AND WOMEN WHO SPEND THEIR ENTIRE WORKING DAYS AND NIGHTS IN THE STREETS OF OUR GREAT COUNTRY; THEY ARE THE FRONT LINE TROOPS IN THE DAY-TO-DAY BATTLE ON BEHALF OF THE PEOPLE OF THIS COUNTRY AGAINST THOSE WHO ARE BENT ON CRIMINAL ACTIVITIES. WE KNOW THAT ALL OF YOU HERE TODAY SUPPORT THE DAILY ENFORCEMENT EFFORTS OF THESE AGENTS. LEST THERE BE ANY DOUBT, WE ARE BEFORE YOU NOW TO STATE UNEQUIVOCALLY THAT THOSE FIELD TROOPS SUPPORT FULLY THE NOMINATION OF COUNSELOR MEESE.

WE RESPECTFULLY SUGGEST THAT MR. MEESE WILL BRING TO THE OFFICE OF THE ATTORNEY GENERAL NOT MERELY A WEALTH OF LAW ENFORCEMENT EXPERIENCE, BUT ALSO A SENSE OF JUSTICE COUPLED WITH AN UNQUENCHABLE DESIRE FOR FIGHTING CRIME. FURTHERMORE, WE FEEL THAT COUNSELOR MEESE, THOUGH AN INDIVIDUAL WHO WILL BE TOUGH ON CRIME AND CRIMINALS, IS ALSO A SENSITIVE MAN WHOSE COMPASSION FOR THE VICTIMS OF CRIMINAL ACTIVITY IS WELL KNOWN. HE IS THE CO-FOUNDER OF THE CRIME VICTIMS ADVOCACY INSTITUTE.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, WE DO NOT MAKE THIS ENDORSEMENT LIGHTLY; OUR COLLECTIVE CONSCIENCE WILL NOT PERMIT A LIGHT DECISION IN THIS REGARD. WE ARE MAKING THIS ENDORSEMENT BECAUSE WE SINCERELY BELIEVE, BASED ON OUR EXPERIENCE AND MR. MEESE'S RECORD, THAT HIS CONFIRMATION FOR THE OFFICE OF ATTORNEY GENERAL OF THE UNITED STATES WOULD BE OF BENEFIT NOT ONLY TO THE FEDERAL ENFORCEMENT EFFORT, BUT TO THE ENTIRE LAW ENFORCEMENT COMMUNITY OF THE UNITED STATES. THANK YOU. I WILL NOW ATTEMPT TO ANSWER ANY QUESTIONS THE COMMITTEE MEMBERS MAY HAVE.

The **CHAIRMAN**. I want to express my appreciation to all of the witnesses. You have been around here now for 2 days, waiting to testify. You have been very patient, and you have come forward now and presented excellent testimony in behalf of Mr. Meese. I am sure he is very grateful to you, and we thank you for your presence and your testimony.

There are no further witnesses to come up tonight.

We are going to stand adjourned until 9:30 Monday morning.

[Whereupon, at 7:10 p.m., the committee was adjourned, to reconvene Monday, March 5, 1984, at 9:30 a.m.]

NOMINATION OF EDWIN MEESE III

MONDAY, MARCH 5, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to recess, at 9:35 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Specter, Metzenbaum, Kennedy, Biden, East, Mathias, and Laxalt.

Staff present: Duke Short, chief investigator; Joseph Kopka and Allan J. Spence, investigators; and Ruth E. Lucas, investigative clerk.

The CHAIRMAN. The committee will come to order.

Are there any witnesses here who cannot be here this afternoon, either in behalf of Mr. Meese or who will testify against Mr. Meese?

If so, would you come forward and let us see who they are.

Senator Kennedy cannot be here until about 12:30, and he has specifically requested he would like to be here when we take up some of these panels.

Senator Metzenbaum prefers not to go into the finance part until after lunch, and we will accommodate him, too, if we can.

So I am just wondering if there are some witnesses who we could go forward with this morning who cannot be here this afternoon, and if you would come forward, if there are any.

It appears that there are none. We do not want to delay this hearing.

On the other hand, we want to accommodate the Senators. I think, in view of that problem, we had better delay until 12:30, and then maybe run from 12:30 to 1:30. Senator Hatch, could you take the Chair from 12:30 to 1:30?

Senator Specter, could you take the hearing from 12:30 to 1:30?

Senator SPECTER. Yes, I could.

The CHAIRMAN. The distinguished Senator from Pennsylvania will take the hearing from 12:30 until 1:30 and then we will come back this afternoon—let us see, you take 12:30 to 1:30, and we will resume by 2:30 then—would it suit you to catch your lunch, start at 12:30 and keep on through?

Senator SPECTER. I could do that, Mr. Chairman.

The CHAIRMAN. Until I get back.

So we will just take a break to accommodate you and Senator Kennedy until 12:30. We will start at 12:30.

So if you can get your lunch and be ready at 12:30 and keep going.

Senator **Metzenbaum**. What will be the program this morning?

The **Chairman**. Well, if I accommodate Senator Kennedy on this and——

Senator **Metzenbaum**. Senator Kennedy did not want any of the group?

The **Chairman**. That is my understanding. Well—we finished with panel 2 on Friday night—in other words, it seems as if I am going to accommodate you and Senator Kennedy, we had better just recess until 12:30, begin then and run straight on through.

Will that suit you, Senator Metzenbaum?

Senator **Metzenbaum**. Certainly will.

The **Chairman**. Will that suit Senator Kennedy?

Then we will start the panels at 12:30.

The Senator from Pennsylvania will be presiding and panel 2 will be up then—no, it will be panel 1. We took panel 2 Friday night. It will be panel 1.

Then we go to panel 3 and then on through.

Senator **Metzenbaum**. When will Mr. McKean and Mr. Barrack be available?

Mr. **Short**. They will be available at 2 o'clock, depending if the chairman decides if he wants to go straight through with the panels or break and have the two financial witnesses come forward—that decision has not been made. We have notified them.

The **Chairman**. We would request then all witnesses to be available from 12:30 on through the rest of the day.

We will take a recess now until 12:30.

[Whereupon, at 9:42 a m., the committee adjourned, to reconvene at 12:30 p.m., the same day.]

AFTERNOON SESSION

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The **Chairman**. This afternoon the committee will continue the hearings on the nomination of Mr. Edwin Meese to be Attorney General of the United States.

Senator Metzenbaum requested Mr. John McKean, Mr. Thomas Barrack, and Mr. Irv Howard appear before the committee and testify concerning their financial dealings with Mr. Meese. Mr. Howard, due to health reasons, was unable to travel to Washington. Therefore, the committee sent two members of the Judiciary staff to California this past weekend to interview Mr. Howard.

I would like to note for the record that both Mr. McKean and Mr. Barrack will be appearing voluntarily, and I would like to thank both of them for taking time from their busy schedules to assist the committee in this inquiry.

However, prior to hearing from these individuals, I would like to clarify the record concerning the witnesses scheduled to be heard this morning.

As I stated this morning, Senator Kennedy had requested last Friday that we not begin taking the testimony of the panel of witnesses until 12:30 this afternoon. I was unaware that the distinguished Senator from Delaware preferred to start with those witnesses as scheduled this morning. I regret any inconvenience caused the distinguished Senator and ranking minority member of this committee, Senator Biden.

Senator Biden has been very cooperative, and not only during these hearings, but in all committee activities.

We will therefore start this afternoon with Congressman Julian Dixon representing the Congressional Black Caucus.

Following Congressman Dixon, we will hear from panel 1 and the remaining panels in order, with the exception of panel 2, which we heard last Friday.

I do not want to delay the witnesses any longer. They have been prepared to testify since last Thursday. I therefore intend to hear from all of the panels prior to hearing from Mr. McKean and Mr. Barrack.

Any Member of Congress wishing to testify will be allowed 10 minutes. All other witnesses will be limited to 5 minutes. Your full statements will be entered into the record so please summarize and be as brief as possible in this 5 minutes allotted to each witness.

Is Congressman Dixon here?

If so, I ask him to come forward. We will take him now.

He is not here so we will ask the panel 1 to come forward, Judy Goldsmith, president, National Organization for Women, Inc., Washington, DC; Ralph G. Neas, executive director, Leadership Conference on Civil Rights, Washington, DC; Althea T.L. Simmons, director, Washington Bureau, NAACP; Jack Greenberg, director-counsel, NAACP Legal Defense and Educational Fund, Inc., Washington, DC; and Roy Innis, national chairman, The Congress of Racial Equality, CORE, New York.

Now, if any of these people are present, come forward now and testify. We will have to take these people in the order we have stated. If they are not here, they waive their opportunity to testify.

We have about 40 witnesses scheduled to testify, with the exception of Members of Congress, if they come in—there is only one who has requested, Congressman Dixon.

I have a leadership meeting I have got to go to and then the prayer amendment is coming up and so, therefore, I have requested the distinguished Senator from Pennsylvania to conduct this hearing until I return.

I wish to thank him for his kindness. He is a very faithful member of this committee. He is always here.

I now turn the Chair over to the distinguished Senator from Pennsylvania.

Senator SPECTER [presiding]. Will you stand to be sworn, please? Our procedure is to be sworn.

Do you swear that the testimony you shall give before this committee shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Neas, you are first on the listed agenda so if you would identify yourself fully for the record.

TESTIMONY OF PANEL CONSISTING OF RALPH G. NEAS, EXECUTIVE DIRECTOR, LEADERSHIP CONFERENCE ON CIVIL RIGHTS, WASHINGTON, DC; ALTHEA T.L. SIMMONS, DIRECTOR, WASHINGTON BUREAU, NAACP; AND ROY INNIS, NATIONAL CHAIRMAN, THE CONGRESS OF RACIAL EQUALITY [CORE] NEW YORK

Mr. **Neas**. My name is Ralph G. Neas. I am the executive director of the Leadership Conference on Civil Rights, a coalition of 165 national organizations.

Mr. Chairman, would it be possible for us, since we do not have a full panel, to have an extra minute or two to testify?

Senator **Specter**. We would be hopeful that Mr. Greenwood and Ms. Goldberg would arrive before the panel concludes their testimony, and they are welcome to testify.

If you need another minute, you may proceed.

Senator **Biden**. I have enough questions for you, Ralph, you will have 45 minutes or an hour.

Mr. **Neas**. I want to thank the committee for allowing us the opportunity to testify today.

The Leadership Conference strongly opposes the confirmation of Edwin Meese to be Attorney General of the United States.

In the course of its 34 years, the conference has only rarely taken a position on a Presidential nomination. Indeed, this is the first time in more than a decade that the conference has opposed a Cabinet or Supreme Court level nomination. Only an extraordinary situation could compel such a decision.

I want to make it clear at the outset that the conference's position is not based primarily on the considerable differences that we have had with the substantive policies and programs initiated and developed by Mr. Meese in his White House role. If such a standard had been applied in the past, we would have opposed more than a few nominations advanced in the last four administrations.

Bluntly put, we oppose the nomination because, on the basis of our observations over the past 3 years, we do not believe Ed Meese, as the Nation's chief law enforcement officer, would enforce vigorously and objectively our Nation's civil rights laws.

The extreme civil rights positions taken by Mr. Meese and the Reagan administration are reprehensible. Their efforts to defeat a strong and effective Voting Rights Act, to oppose the equal rights amendment, to relax the obligations of school systems for educating handicapped children, to restrict constitutional remedies that have long been available, and to weaken almost all our civil rights laws, have demonstrated repeatedly the administration's insensitivity, unfairness, and indifference to women, minorities, the disabled and many other victims of discrimination.

But it is the special nature of the Office of Attorney General that should be the overriding issue before the Senate Judiciary Committee: The Attorney General of the United States is the Government's chief law enforcement officer.

Mr. Chairman, I would like permission to put the remainder of my prepared text in the hearing record.

Senator **Specter**. Without objection, it will be made a part of the full record.

[Prepared statement follows:]

PREPARED STATEMENT OF THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS OPPOSING THE CONFIRMATION OF EDWIN MEESE TO BE ATTORNEY GENERAL, RALPH G. NEAS, EXECUTIVE DIRECTOR

Mr. Chairman and members of the Committee, my name is Ralph G. Neas. I am the Executive Director of the Leadership Conference on Civil Rights, a coalition of 165 national organizations representing Blacks, Hispanics, women, labor, the disabled, senior citizens, Native Americans, religious groups, and minority businesses and professions. On behalf of the Conference, I want to thank the Committee for allowing us the opportunity to testify today.

The Leadership Conference strongly opposes the confirmation of Edwin Meese to be Attorney General of the United States.

In the course of its thirty-four years, the Conference has only rarely taken a position on a presidential nomination. Indeed, this is the first time in more than a decade that the Conference has opposed a Cabinet or Supreme Court level nomination. Only an extraordinary situation could compel such a decision.

I want to make it clear at the outset that the Conference's position is not based primarily on the considerable differences that we have had with the substantive policies and programs initiated and developed by Mr. Meese in his White House role. If such a standard had been applied in the past, we would have opposed more than a few nominations advanced in the last four administrations.

Bluntly put, we oppose the nomination because, on the basis of our observations over the past three years, we do not believe Ed Meese, as the nation's chief law enforcement officer, would enforce, vigorously and objectively, our nation's civil rights laws.

The extreme civil rights positions taken by Mr. Meese and the Reagan Administration are reprehensible. Their efforts to defeat a strong and effective Voting Rights Act, to oppose the Equal Rights Amendment, to relax the obligations of school systems for educating handicapped children, to restrict constitutional remedies that have long been available, and to weaken almost all our civil rights laws, have demonstrated repeatedly the Administration's insensitivity, unfairness, and indifference to women, minorities, the disabled and many other victims of discrimination.

But it is the special nature of the office of Attorney General that should be the overriding issue before the Senate Judiciary Committee: The Attorney General of the United States is the government's chief law enforcement Officer.

Indeed, it is essential to understand that under our constitutional framework, the Attorney General does not make the law (a power which belongs to Congress). Nor does he definitively interpret the Constitution and laws (a power which resides in the Supreme Court). Rather, as part of the executive branch, the Attorney General's principal duty is to enforce the law.

Regrettably, a brief look at the Administration's decision-making process on a number of critical civil rights issues will demonstrate that Ed Meese lacks the commitment to ensure that the laws are fully enforced and too often encroaches inappropriately upon the constitutional responsibilities of the Judicial and Legislative Branches.

The Bob Jones fiasco is perhaps the best example of what we are talking about. Since the early 1970's, it has been well established law that the government could not grant tax exempt status to schools which discriminate on the basis of race. Apparently, Mr. Meese and others wanted to change that policy. Rather than ask Congress to enact new legislation or ask the courts to reverse past rulings, the Administration announced on January 8, 1982 that it would no longer deny tax exempt status to schools like Bob Jones and Goldsboro Christian.

Because of the political firestorm that erupted, President Reagan, Mr. Meese, and others began a series of confusing and contradictory explanations. Eventually they backed off. But not until it became painfully apparent that Mr. Meese and his allies in the Administration were more than willing to refuse to enforce a law with which they disagreed. Subsequently, of course, the Supreme Court repudiated the Administration's legal position by an 8–1 vote.

Another example is Mr. Meese's involvement in the Legal Services Corporation. It has long been clear that Mr. Meese has worked hard to abolish the Legal Services Corporation.

Furthermore, once Congress overwhelmingly rejected the Reagan Administration's attempts to kill the Corporation, President Reagan, through Mr. Meese and his staff, proceeded to do everything possible to gut it by executive action. Contrary to congressional intent, attempts were made to control the Legal Services Corporation by appointing individuals who would dismantle the Corporation from within.

In addition, Mr. Meese is responsible for the Administration's repeated efforts to circumvent the constitutional responsibilities of the Senate by making recess appointments to the Corporation Board, thus allowing the Administration's chosen people to run the Corporation without obtaining Senate confirmation. To this day, we still do not have one Board member who has been confirmed by the Senate.

Finally, there is the death of the independent U.S. Civil Rights Commission. For twenty-five years, no President had ever fired a member of the Commission. But thanks to the leadership role of Mr. Meese, President Reagan has fired five commissioners who disagreed with his civil rights policies and replaced them with commissioners who reflect his views. We now have the Reagan Commission on Civil Rights.

The firings, of course, were inconsistent with precedent, the law, and the expressed intent of bipartisan majorities in both Houses of Congress. But, once again, Mr. Meese and the Reagan Administration accomplished by executive fiat what they could not persuade the Congress or the Courts to do.

The actions and attitudes of Edwin Meese as presidential counselor are, by themselves, deeply disturbing. But when you combine the possible confirmation of Ed Meese with the Department of Justice's current record of non-enforcement with respect to civil rights laws, you have a Justice Department in constant conflict with the Constitution and the courts, and the rule of law itself is imperiled.

While the Justice Department constantly uses the issues of busing and quotas to deflect attention from its abysmal enforcement record, its record cannot be hidden from full public scrutiny too much longer. For example, in the first thirty months of the Reagan Administration, it has filed one school desegregation suit. And that suit was pursuant to a court order. In fair housing, it had filed six cases, compared to forty-six cases filed by the previous administration in the same amount of time. With respect to all civil cases filed, the Reagan Administration and filed 42, compared to 124 cases for the Carter Administration, a precipitous decrease of 66 percent.

It is no wonder that based on the Department's rhetoric and its record of nonenforcement, minorities, women, the disabled and others no longer view the Justice Department as the champion for those who have been the victims of discrimination. Rather they consider the Department of Justice their adversary.

The confirmation of Ed Meese, someone who has already demonstrated that he is not committed to vigorously enforcing our civil rights laws would only reinforce that belief. The Senate must only confirm an individual who will enforce the law, someone who will be an Attorney General for all the people, not just for the priviledged few. To do less will compound immeasurably the tragedy of the Reagan record on civil rights.

We strongly urge the committee to conduct comprehensive hearings on the nomination of Edwin Meese, both with respect to his record in Washington and his record of public service in California. We are confident that once Senators fully understand the Meese record, they will conclude that he is not qualified to be the nation's chief law enforcement officer.

A number of organizations in the Leadership Conference do not take positions supporting or opposing confirmations of federal officials, and for that reason do not join us in this statement. The Anti-Defamation League, the U.S. Catholic Conference, and the American Jewish Committee have specifically requested that they not be listed as concurring in this statement.

Mr. NEAS. And respond to a few comments that have been made.

Senator Simpson, in his opening statement, brought up the question of partisanship and trashing Mr. Meese. And he remarked that perhaps the succeeding groups would be testifying from a partisan perspective.

Because of my concern about these remarks, I talked to Senator Simpson and told him I would be bringing this issue up. To say the least, the civil rights community in the 3 years of the Reagan administration has been committed to bipartisanship along with members of this committee. Together, we have won the extension of the Voting Rights Act, the Martin Luther King holiday and, legislatively at least, the Civil Rights Commission. It is the Reagan administration that has not been bipartisan. Indeed, their record on civil rights over the last 3 years is worse than any administration over the last half a century.

I would like to explain why I make such a strong statement. Let us look at the Reagan record on issues before the Congress and the courts. And I am not talking about the issues of busing and quotas, the only issues that the Reagan administration ever wants to talk about. They use those issues as decoys, camouflage for the regressive actions they are taking in the Congress and in the courts.

First, the *Bob Jones* case. Most committee members opposed the Reagan administrations stance. Of course, the Supreme Court, by an eight to one vote, repudiated the administration's position.

Second, the Voting Rights Act. Barely a month after the House passed extension legislation 389 to 24, this administration said that the House position was extreme and unreasonable. It was not until the members of this committee went to the President with 80 plus votes that the President finally decided not to veto what was about to pass the Senate.

Next, the administration's *Grove City* position was repudiated by a 414 to 8 vote in the House of Representatives.

Regarding the Civil Rights Commission, the House of Representatives on August 4, 1983 voted 286 to 128 to repudiate the President's position. Many members of this committee convinced more than 60 Senators to support a bill introduced by Senators Specter and Biden that would have taken the Civil Rights Commission out of the executive branch and into the legislative branch solely because the President could not be trusted to preserve the independence of the Civil Rights Commission. Now let's look at the Reagan administration's record of enforcement. Again, all we hear from this administration is "busing and quotas." They maintain that these two issues are the only differences between them and the Civil Rights Community.

But, what is the real record? In fair housing, six cases have been filed by the Reagan administration, compared to 46 in a comparable period by the Carter administration, a decrease of 87 percent. In school desegregation, one case has been filed in the first 30 months and that was as a result of a court order. With respect to the Voting Rights Act, one-third as many cases have been objected to under section 5 than in the previous 17 years. Regarding title IX and the Civil Rights for the Institutionalized Act, there have been a total of five or six cases. And looking at civil rights cases as a whole, 42 cases have been filed by the Reagan administration, 124 by the Carter administration, a decrease of 66 percent.

The former Director of the President's Women's Project stated the women's project was a sham.

Mr. Chairman, the Reagan administration's entire civil rights enforcement record is a sham. But there is something here more important than the policies. The policies are insensitive; they are unfair. But the central issue is fidelity to the rule of law. Mr. Meese and the administration have demonstrated that they are willing to ignore congressional intent and defy the rulings of the Supreme Court. What is at stake is more than the nomination of an Attorney General, more than the issue of civil rights. What is at stake is the rule of law.

Mr. Chairman, in conclusion, I respectfully urge the committee to call back Mr. Meese before the members vote. They most know whether Mr. Meese will enforce all of the laws, irrespective of his personal views. Not to find out the answer to this question would be an abdication of this committee's advice and consent responsibilities.

Thank you very much for the extra time, Mr. Chairman.

Senator SPECTER. We will proceed with the full panel before we proceed to questions.

Next we will hear from Ms. Althea T.L. Simmons, director of the Washington Bureau of the NAACP.

Ms. SIMMONS. Mr. Chairman and members of the committee, I am Althea T.L. Simmons, director of the Washington Bureau of the National Association for the Advancement of Colored People.

I certainly appreciate the opportunity to appear and present testimony on behalf of our organization.

The NAACP is the Nation's oldest and largest civil rights association with more than 1,800 branches and youth units in the 50 States and the District of Columbia.

We oppose the nomination of Edwin Meese to be the Attorney General of the United States. We believe, that the quotation by one of the Founding Fathers, Thomas Jefferson, who wrote in the Declaration of Independence that "we hold these truths to be self-evident . . . that all men are created equal," and that they are endowed by their creator with certain inalienable rights, points up that equality and justice have been long-established American ideals.

The Justice Department has a very unique position in our Government. Its daily actions impact profoundly on the lives of all individuals. Who can forget the central role of the Attorney General in the Watergate tragedy? Who can forget the broad feeling that the Nation's trust in itself had to be restored through making the office of Attorney General above reproach? It is absolutely essential that the Attorney General be a person of unchallenged integrity, commitment and credentials, who will protect the rights of all of the people.

The Attorney General is a symbol of justice as well as a person, an office as well as an officeholder.

We oppose Mr. Meese, because we do not believe he is that symbol and reality of such leadership. Unless it is refuted, at these hearings the record indicates that Mr. Meese has been and continues to be involved in a lot of activities that are offensive not only to millions of black Americans but to all who value equality and justice.

For example, his involvement in the IRS tax exemption issue, the Voting Rights Act, Legal Services Corporation, and we can go back, for example, to California where Mr. Meese then opposed and attacked the Legal Rural Assistance Program in California in the early 1970's. As a result of that, Federal financial funding for California rural legal assistance was vetoed.

Mr. Meese is the principal cited in numerous newspaper reports as being the chief official responsible for this attempt to truncate legal services for California's poor.

If you talk in terms of insensitivity, we can think about Mr. Meese's support of tuition tax credits. Such credits will be potentially damaging to public schools and to minorities and to the poor. His support for narrowing the scope of title IX of the 1972 amendments, his role in the disastrous plans to cut Social Security benefits, his statements in the press concerning taxing the unemployed, and other examples we could give, if we had the time.

NAACP is also concerned about the statement of Mr. Meese a couple of days ago with respect to the number of blacks on the bench. We have a grave concern about that, because in the space of 3 years, only two blacks have been placed on the Federal bench. The 59-year-old National Bar Association can attest there are a large number of blacks who are qualified and who meet the ABA standard of 10 to 12 years of practice. As a matter of fact, in 1970 there were 4,000 black lawyers many of whom were qualified to serve on the Federal bench.

It occurs to us since the Attorney General has a central role in helping to take a look at persons who are nominated for judgeships, we need to know how Mr. Meese's position on the elevation of blacks, women, and minorities to the bench.

There are many forces in the Justice Department right now dedicated to turning the clock back on civil rights. One can look at today's New York Times for the headline "United States To Support Whites on Bias Decree."

This is another example of what has happened with reference to New Orleans, Detroit, and now Birmingham. The system of retreat is in place right now in the Department of Justice. I think this committee needs to know where Mr. Meese would stand if he was Attorney General in terms of supporting suits that will narrow the rights of black Americans.

One of the other issues we are quite concerned about is the issue of back pay awards. We know that right now the Justice Department is saying back pay awards should be limited to 2 years. We want to know where Mr. Meese stands with respect to that, and whether he will faithfully uphold the rule of law, and whether or not blacks and other minorities can feel that their rights are protected by the Department of Justice.

It is the NAACP's belief that, unless the new Attorney General has a firm commitment to uphold the civil rights laws in the Department's area of responsibility, we will see continued retreat instead of progress. We will see again growing disenchantment with the governmental process of the United States, and the Meese hearings provide this committee with the occasion to halt this retrogression. These hearings provide the committee the occasion to reassert those specific ideals of equality and justice for all that fundamentally define us as a democratic people.

I think our position can best be represented by quoting Edward Bates, the Attorney General in the Lincoln administration, who voiced a standard for the Office of Attorney General. It is a standard which the NAACP believes can stand the test of time. Mr. Bates said:

> The office I hold is not properly political, but strictly legal; and it is my duty above all other Ministers of State to uphold the law and resist all encroachments, from whatever quarter, of mere will and power.

Mr. Chairman, and members of the committee, we do not believe that Mr. Meese can uphold the law and resist all encroachments. We believe that Mr. Meese would make political decisions where legal decisions are deemed appropriate and, therefore, the NAACP certainly hopes that you will reassert the ideals of equality and justice and give hope to 30 million black Americans and others by voting against the confirmation of Mr. Meese for this important position.

Thank you so much for allowing us to testify.

[The following was received for the record:]

TESTIMONY
OF
ALTHEA T. L. SIMMONS
DIRECTOR, WASHINGTON BUREAU
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Chairman and members of the Committee, I am Althea T. L. Simmons, Director of the Washington Bureau of the National Association for the Advancement of Colored People. I thank you for this opportunity to appear and present testimony on behalf of our organization.

The NAACP is the nation's oldest and largest civil rights association with more than 1800 branches and youth units in the fifty states and the District of Columbia.

We oppose the nomination of Edwin Meese, III to be Attorney General of the United States.

It was one of our most renowned and oft-quoted Founding Fathers, Thomas Jefferson, who wrote in the Declaration of Independence that "We hold these truths to be self-evident...that all men are created equal," and that they are endowed by their creator with certain inalienable rights. Thus equality and justice for all have been long-established American ideals.

The Justice Department has a unique position in our governmental structure. Its daily actions have profound impact on all segments of American society. It is the protector of rights and the enforcer of our laws. Its policies and decisions affect matters from civil rights to anti-trust policy, from the FBI to criminal prosecution, from drug enforcement to all forms of crime. It plays a central role in the appointment of judges at all levels of the Federal judiciary. The Attorney General, as the nation's chief prosecutor, lawyer to the Executive Branch and supervisor of the Federal Bureau of Investigation, must be above reproach in enforcing the laws equitably.

Who can forget the central role of the Attorney General in the Watergate tragedy? Who can forget the broad feeling that the Nation's trust in itself had to be restored through making the office of Attorney General above reproach. It is absolutely essential that the Attorney General be a person of unchallenged integrity, commitment and credentials.

The Attorney General is a symbol of justice as well as a person, an office as well as an officeholder. In a society committed to civil rights for all, it is essential that such a symbol be one of moral and legal leadership.

The NAACP opposes Mr. Meese precisely because we believe he is not the symbol and reality of such leadership. Unless thoroughly refuted in these hearings, the record firmly indicates that Edwin Meese, III has been and continues to be involved in activities offensive not only to millions of black Americans but to all who value equality and justice. Mr. Meese's record demonstrates that he lacks the commitment to ensure that laws are fully enforced and too often encroaches upon the powers of Congress and the Supreme Court. At best,Mr. Meese's actions demonstrate that he does not completely accept the constitutional power of Congress to make the laws, and of the Supreme Court to interpret the law. At worst, Mr. Meese and others in the Reagan Administration deem themselves above the law and able to trample over it by using ingenious schemes devised to deny constitutional rights to some of the Nation's peoples.

The NAACP's opposition to Mr. Meese rests on three main grounds: His insensitivity and apparent prejudices, his constitutional views, and his lapses of personal judgment. Each of these areas demonstrate Mr. Meese's unsuitability for the office of Attorney General.

The Political Prejudices of Edwin Meese

One of the best examples of Mr. Meese's political biases and insensitivities at work is his role in the tax exemption shift. Since the early 1970's, it has been well-established law that the government could not grant tax exempt status to schools which discriminate on the basis of race. Apparently Mr. Meese and others in the Administration were unhappy with this policy. Rather than asking the Congress to enact new legislation or the courts to reverse past rulings, the Administration announced on January 8, 1982 that it would no longer deny tax exempt status to schools like Bob Jones.

After the storm of criticism emerged, the President, Mr. Meese and others began a series of contradictory explanations. First, Mr. Meese and other top officials denied for days that Mr. Reagan had any direct involvement in the decision. They depicted the issue as a matter that originated with Treasury and Justice Department officials. On January 20, 1982 the White House acknowledged that President Reagan personally gave instructions in the Administration's controversial decision. Mr. Meese was quoted in the press as saying that everyone in the White House knew about it but he had "nothing to do with the decision." Eventually the Reagan Administration in toto backed off, and subsequently, the Supreme Court repudiated the Administration's legal position by an 8-1 vote. Three pertinent concerns were clearly revealed in this issue:

(1) Mr. Meese appeared more than willing to refuse to enforce the law if he disagrees with that law.

(2) Mr. Meese showed a lack of candor in answering queries concerning actions he had taken. While White House sources reported his involvement in the issue for over a month, Mr. Meese engaged in "double speak" about approving the decision but never giving "full approval," and certainly he indicated nothing for the record showing that he said these things should not be done or that he did his best to stem the tide.

(3) While in a voting rights case, the Supreme Court decided that the Constitution of the United States prohibits simple-minded, as well as sophisticated attempts to negate the 15th Amendment, we believe this ruling applied to all civil rights laws, Mr. Meese and others were attempting to use a carefully-engineered obfuscation to deny the rights of blacks.

Another example of Mr. Meese's political bias at work is his leadership in the Administration's opposition to the Voting Rights Act in 1982. Mr. Meese pushed unsuccessfully for weakening amendments in the extension of this popular act. The NAACP believes that Mr. Meese thinks and acts primarily in political expedient terms rather than in legal or moral terms required of an Attorney General. This to us is amply demonstrated by his statement in an interview for The National Journal where he explained his position by saying "I think our original position on the Voting Rights Act extension...was about as courageous as anybody in the Republican party or with anything resembling a conservative constituency was willing to take in 1981." The issue of Voting Rights is not one to be decided by what's good for the Republican party or a conservative constituency, but what guarantees equal voting rights for all.

Then we have the case of Mr. Meese's successful efforts to destroy the independence and objectivity of the U. S. Commission on Civil Rights. The once independent monitor of civil rights has been, to our way of thinking, transformed into a mouthpiece of the Administration rather than its serving as a conscience of the Nation.

Still another example of Mr. Meese's biases is his three unsuccessful attempts to destroy the Legal Services Corporation.

He led the Administration's drive to cut the Legal Services Corporation budget, arguing instead for tax breaks to private attorneys who supervise third year law students working for the poor.

In addition, Mr. Meese is responsible for the Administration's repeated efforts to circumvent the constitutional responsibilities of the Senate by making recess appointments to the Corporation Board, thus allowing the Administration's chosen people to run the Corporation without Senate confirmation. To this day, there is not one corporation board member appointed by the Reagan Administration who has been confirmed by the Senate.

Of particular concern is the reported view of Mr. Meese that "the Attorney General is the personal attorney for the President, his only client." If this is so, then in effect, Mr. Meese advocates free legal services for the President at the taxpayers' expense while continuing to advocate the destruction of legal services for the poor.

The NAACP urges this Committee to thoroughly investigate Mr. Meese's involvement in Mr. Reagan's attack on legal aid in California in the early 1970's. Although Mr. Reagan vetoed federal financing for California Rural Legal Assistance, Republican judges from outside California rejected Mr. Reagan's charges that CRLA attorneys incited student and prison unrest, and restored the CLRA's funding. Mr. Meese is the principal cited in numerous newspaper reports as being the chief official responsible for this attempt to truncate legal services for California's poor.

The list of cases demonstrating Mr. Meese's insensitivity to the poor, minorities and women could be extended. If time permitted, we could discuss Mr. Meese's support of tuition tax credits and the potential damage to public schools these credits would cause; his insensitive remarks on the hungry in our Nation; his support for narrowing the scope of Title IX of the 1972 Education Amendments; his role in the politically disastrous Administration plans to cut Social Security benefits; his statements in the political crossfire concerning taxing the unemployed; his disingenuous reference understating the dangers of nuclear war and; his unfair characterizations of the Professional Air Traffic Controllers organization. I shall offer, with the permission of the Chairman, articles from the newspapers and journals which discuss Mr. Meese's role in all issues referred to in my testimony.

I am convinced that we have not heard the full story of Mr. Meese's involvement in these matters. If Mr. Meese feels he took the legally correct position in issues such as the Bob Jones fiasco, the Legal Services battle, etc., then he is in a position to explain his position to this Committee. If. Mr. Meese still claims to have no role in some of these issues, did he just stand idly by?

Mr. Meese's Constitutional Views

A second area of Mr. Meese's record which is extremely troublesome to the NAACP is that so much of what seems to matter to Mr. Meese is utterly inconsistent with long-settled constitutional law. For example, Mr. Meese believes the New York Times'publication of Pentagon Papers was no different from "receiving stolen property and selling it for profit." Government employees who leak classified documents to reporters are guilty of "betraying this country" Mr. Meese declared on "Meet the Press" in 1981. He has supported a lifetime censorship system for officials who handle highly sensitive information. While the President's counselor understandably does not want to encourage leaks, Mr. Meese's rigid authoritarian stance contradicts basic values of a free and open society, values enshrined in the First Amendment.

Similarly, Mr. Meese denounced the American Civil Liberties Union as a "criminal agent" for convicts in 1977. While the NAACP may not agree with each and every decision of the ACLU, or any other group, it is unquestioned that the ACLU is a strict defender of the Bill of Rights, sometimes defending the right of free speech for groups unpopular with NAACP such as the Klu Klux Klan. Yet, Mr. Meese's opposition to watchdog groups dedicated to protecting constitutional rights for all is consistent for one who would apply laws selectively. For example, Mr. Meese encouraged the President to pardon two FBI officials convicted by a jury for authorizing illegal break-ins during the Nixon Administration while he proposed a preventive detention law for some accused of federal crimes.

Mr. Meese has pushed vigorously for rolling back the Fourth Amendment by gutting the exclusionary rule, which bars the introduction of evidence seized during an illegal search. He apparently feels like Louis XIV, who declared "I am the law." For example, Mr. Meese spearheaded the Administration's drive to jail draft registration resisters, then defied a court order to testify in the case of 21-year old David Wayte, who was being prosecuted for resisting. In 1969 sheriff's deputies killed a man during the People's Park Demonstration in Berkeley. According to news accounts, Mr. Meese told interviewer Robert Sheer that the man "deserved to die."

In short, what is striking about a potential Meese attorney generalship is not its likely conservative cast, but its potential radical cast in discarding long-settled constitutional principles. Even the conservative oriented Chicago Tribune titled its editorial on the failure of President Reagan to nominate a person who would do his job according to the impersonal, non-partisan imperatives of the rule of law, "Dangerous Attorney General."

Lapses of Mr. Meese's Personal Judgment

Beyond Mr. Meese's political prejudices and constitutional views, the NAACP has serious questions about his personal judgment. We urge the members of this Committee to explore the following matters thoroughly before deciding whether or not to confirm Mr. Meese as Attorney General.

First, are the questions remaining to be answered surrounding the $60,000 loans, Mr. Meese's sale of his California house, and the nomination and confirmation of Mr. John McKean, Mr. Meese's personal accountant, who arranged the no collateral loans.

Second, the circumstances of Mr. Meese's promotion to Army Reserve Colonel have yet to be fully explained to our satisfaction. Given the difficulties blacks have encountered in receiving promotions in our Armed Services on the basis of claims of lack of qualifications, a full examination of the administrative actions in this regard is necessary.

Third, can we expect Mr. Meese to uphold the law without regard to political influence, given his record as a "corporate fixer" in the White House. We remind the Committee that in 1982 Mr. Meese helped set up at $1,000-a-crack "President's Club" to benefit the conservative Heritage Foundation in Washington, D. C. In a letter endorsed by Mr.

Meese, contributors were promised "an access to Washington policy makers which cannot be had at any price...you will find you membership fee returned to you many times over." To add insult to injury, this sale of political influence was tax deductible.

Fourth, in 1972 Mr. Meese came under investigation by state officials for appropriating two government cars intended for field use by undercover law enforcement officials. News accounts state that the California Legislature's Auditor General, William Merrifield, called it a misuse of government property.

Fifth, we urge the Committee to question Meese concerning reports that he worked as a personal lobbyist for the Police Officers Association in 1965-66 while he served as Deputy District Attorney for Alameda County, California. Reportedly the California Board of Supervisors stopped Meese in this activity. We ask that the Committee check into Mr. Meese's expense account as a lobbyist.

Sixth, according to published information available to the NAACP, Mr. Meese has been a board member of the Institute for Contemporary Studies. The ICS has supported the establishment of college newspapers which denigrate blacks, such as the Dartmouth Review. The outgoing President of Dartmouth University, in his final address, referred to the Dartmouth Review as sowing the seeds of racial division. The Committee should check into the ICS, the Scaife Foundation which has supported the ICS and Mr. Meese's connection to these organizations.

Finally, we urge the Committee to seek to determine whether Mr. Meese is too close to the President personally and politically to enforce justice in an independent and even-handed way. Many Republican Senators on this Committee once argued that Mr. Bell was too close to Mr. Carter. The Committee is requested to use no double-standard in this regard, for we do not need a visibly partisan person to be the Nation's top law enforcement officer. The office of Attorney General requires a person who is fair, equitable and passionate only in his commitment to the law. The NAACP opposes Mr. Meese because we do not believe, nor does his record indicate, he is such a man.

Conclusion

Today there are many forces within the Justice Department already dedicated to turning back the clock on civil rights and equal justice. Civil rights violators are not being actively pursued and a number of steps have been taken by the Justice Department to weaken civil rights protections.

These actions include efforts to withdraw support for the school desegregation plan developed voluntarily in Seattle; opposition to affirmative action generally and specifically to plans for the Detroit Police Department; refusal to use remedies that the courts have authorized to redress employment discrimination and general failure to enforce the laws in the area of civil rights. The afore-mentioned forces will still be in the Justice Department when the new Attorney General assumes office.

Unless the new Attorney General, the chief of that Department, has a firm commitment to uphold the civil rights laws in the Department's area of responsibility, we will see continued retreat instead of progress. We will see once again growing disenchantment with the governmental process of the United States.

The Meese hearings provide this Committee the occasion to begin to halt this retrogression. These hearings provide this Committee the occasion to reassert (or reject) those civic ideals of equality and justice for all that fundamentally define us as a democratic people.

Edward Bates, the Attorney General in the Lincoln Administration, voiced a standard for the office of Attorney General which the NAACP believes can stand the test of time. Mr. Bates said:

> "The office I hold is not properly political, but strictly legal; and it is my duty above all other ministers of state to uphold the law and resist all encroachments, from whatever quarter, of mere will and power."

Mr. Chairman and members of the Committee, the NAACP urges you to reassert the ideals of equality and justice and give hope to 30 million black Americans and others by voting against the confirmation of Mr. Edwin Meese, III for this important post.

Thank you for this opportunity to be heard on this matter.

Senator SPECTER. Thank you, Ms. Simmons.

Congressman Dixon has arrived since the panel started, and we will turn to him.

Welcome, Congressman Dixon. We look forward to your testimony in your capacity as leader of the Congressional Black Caucus.

TESTIMONY OF HON. JULIAN C. DIXON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; CHAIRMAN, CONGRESSIONAL BLACK CAUCUS

Mr. DIXON. Thank you very much, Mr. Chairman.

I have a written Statement. With your permission, I would like to have it submitted for the record.

I also have the written statement of Congressman Conyers, who could not be here. I would ask that the committee receive that into the record.

Senator SPECTER. Without objection, it will be received.

Mr. DIXON. Let me say, I have followed these hearings on C-SPAN, and I know that many of the issues that have been raised in opposition have all been discussed by members of this committee, and I certainly appreciate that.

I will not read my testimony, but generally talk for 2 or 3 minutes about the Office of the Attorney General, and what standards should be used in selecting the Attorney General.

Certainly, Edwin Meese meets the minimum standards, but a person who was elected or appointed to govern should meet more than those minimum standards. I would suggest to you that the Attorney General of the United States should have an understanding, not only of the majority problems, but those of the minority in our country, and that understanding should go to the perception of problems and solutions for them.

Certainly, the Attorney General has to give the appearance and in fact be fair and impartial in the decisions that are made in the Attorney General's office. It is difficult to speculate many times on the kind of person a candidate is, and certainly will be in holding office.

But, in Mr. Meese's case, we have some examples that have been cited by many members of this committee. When we look at his understanding and perception of real problems in the United States, we find, at least the Congressional Black Caucus finds, that at least he has an insensitivity, and certainly a lack of understanding, of the problems of hunger in our society.

When we look at the *Bob Jones* case, the legal ramifications of that case clearly shows us that Ed Meese does not have the understanding, nor the ability to understand, that minorities in this country and general public policy has been against granting tax exempt status to institutions, educational institutions, that discriminate.

When it comes to public comments, I have some firsthand experience with the reference to criminal lobbies that was made in California. I served in the State legislature from 1972 until 1978, and served on the Criminal Justice Committee, and was directly involved in the whole issue of determinant versus indeterminant sentence, and I can assure you that in 1975 those who were involved on both sides of the aisle, with an array of philosophical persuasions, never thought that any of the organizations that were being represented there in discussing the issues of the appropriateness of terms, or whether we should move from the determinant phase to the indeterminant phase, felt that any of the organizations or individuals were speaking out for any particular class of people in our society, and certainly were not representative of a criminals' lobby.

So to say that a liberal coalition is a lobby for criminals is certainly entirely inappropriate, and is a view that should not be shared by the Attorney General of the United States. It is these utterances that clearly make us feel that the nomination of Edwin Meese should not be confirmed. I think that every citizen has a right to feel that whether the Attorney General of the United States is a Republican or Democrat that he is fair, that he has an understanding of the issues, whether we agree on the solutions or not, but a clear understanding of what the issues are, and that in administering the law, whether it be civil rights or criminal law, that he will be fair and impartial.

Based on the conduct and utterances of Mr. Meese, I think it is a fair conclusion to say that he does not have the understanding, the perception, and to seriously doubt whether he would be impartial.

It is for these reasons that the 21 members of the Congressional Black Caucus opposes his confirmation for Attorney General of the United States.

Senator SPECTER. Questions?

Senator BIDEN. Congressman, thank you for coming over.

Did the Congressional Black Caucus take a position on Mr. Meese's predecessor?

Mr. DIXON. No, we did not.

Senator BIDEN. The present Attorney General, who philosophically is very compatible with the President. I disagree with him, and I suspect you disagree, on a lot of things, but yet, in spite of that, you and the Black Caucus, and the many of us in the Senate, did not vote against him. You did not have a chance to vote, but you expressed your sentiment. I assume it was because you feel the President should be free to appoint a man or woman of his choosing, having the same philosophical sentiment.

Mr. DIXON. Yes. I do not think our opposition goes to his philosophy, but really goes to the kinds of utterances he has made and his conduct as counsellor to the President.

Certainly, Attorney General Smith had not had that opportunity, and had not, I daresay, made the kind of statements, in either public or private life, that Mr. Meese has made.

Senator BIDEN. Unfortunately, or maybe fortunately, the Constitution is not very specific on what elements should go into a Senator's consideration in advising and consenting on a Presidential nominee.

One of the things I factor in when I consider judicial moninees is judicial temperament. It seems to me what you said here goes to the question of not only the nominee's actions, but your reading of his temperament, that he does not seem to be, using my words, not yours, tempermentally suited to be able to communicate that he represents all people, and that he will be impartial.

Do you share that concern?

Mr. **Dixon**. I share that concern, Senator Biden. But I would say at this point he has clearly demonstrated that he cannot or will not represent all people, when you look at the kinds of statements, or the kinds of programs he has urged.

In listening to testimony, it becomes quite fuzzy to put your hand on individuals in the administration that have done certain things. It is very hard to trace. But it is clear to me that the counsellor to the President of the United States has had, or should have had, tremendous input into the *Bob Jones'* decision.

Senator **Biden**. I and other members of the committee questioned him fairly extensively on that point, and I was impressed to learn that he was as powerless as he turned out to be. He made, I thought, a very presentable case that it really did not happen on his watch, that it was something that he just sort of passed on, that he did not think it was his role, if I remember correctly, did not think it was his role to be the one to brief the President on the legality of the decision. As we went through that legal process, in a chronological fashion, he indicated that that decision was one that he should not be making and that he did not attempt to make.

I guess what you are saying is you do not believe that, you do not believe that he did not have a larger role to play.

Mr. **Dixon**. At least I would say he should have played a larger role. I am quoting from the Washington Post in an article in which Mr. Meese was interviewed. He says that the issue came along as nothing more than allowing bureaucrats to make social policy, that is all.

It seems to me at least that is a lack of sensitivity for a counselor to the President.

Senator **Biden**. I know it is a long way over here from the other body, but thanks for taking the time. I appreciate your testimony.

I have no further questions of this witness.

Senator **Specter**. Senator Kennedy.

Senator **Kennedy**. Thank you very much, Mr. Chairman, and I too want to welcome Congressman Dixon.

I do think it is important for this committee and for the Senate to have the views of the caucus on the nominee. So it is of great help and assistance to this committee that the caucus has taken time to join with us.

One of the concerns I have Congressman, is that it seems in any of the instances that came before Mr. Meese on the range of civil rights issues or questions, that he always took the narrowest view in his interpretation of the law. It would certainly appear to me that you might even say that in a number of instances he was looking for a legal argument to circumvent what has been established as a precedent in terms of reducing discrimination in our society. And the concern that I have for Mr. Meese's qualifications is whether that trend would continue should he be confirmed as Attorney General. If it did, the great numbers of American people, not just minorities but all Americans who believe in equality, who believe in our responsibility to eliminate discrimination and prejudice in our society, certainly would not feel that they had someone who was serving as Attorney General who was advancing the cause of equality.

Do you think that, based on Mr. Meese's record as counsel to the President, if he were confirmed as Attorney General there would be a number of Americans that would look to the people's lawyer as someone that was perhaps looking for ways of undermining rather than strengthening the efforts to free us from discrimination.

Mr. DIXON. Absolutely, Senator Kennedy, I would agree with you. As the Nation's chief law enforcement officer, the attorney of the United States, there can be no question, I think, in the public's mind as to his ability to be impartial and to understand the total parameters of all of the legal and social problems in our country.

I am saying that the caucus has come to the conclusion, not based on speculation but on conduct thus far, that he cannot fulfill that job in that capacity.

Senator KENNEDY. Mr. Dixon, if you add up the various matters in which Mr. Meese has been involved in this administration, whether it is the Civil Rights Commission, which you were very, very much involved in, or the *Bob Jones* and *Grove City* cases, or his statements on hunger, and opposition to Legal Services Programs, it seems to me that you have an individual that really does not understand what the other side of America is really all about, and I am just wondering whether we should not, as a matter of good conscience have real reservations about Mr. Meese serving as the people's lawyer. Do you think the groups who have felt the plight of discrimination and prejudice would not have a sense of hope about Mr. Meese as Attorney General?

It is a general question, but I would be interested in what comment you might make.

Mr. DIXON. Well, as it relates to one of the issues, and that is the Civil Rights Commission, that you mentioned, it is my recollection from watching C-SPAN when Mr. Meese was testifying, that he said that he had no direct involvement in that. I have no firsthand knowledge, but when Senator Biden and Senator Kennedy and others met, there was a clear impression that there had been a sign-off of an agreement with the White House, and that the person from the White House who was representing the President on this issue was Edwin Meese.

I think, as I indicated to you earlier, that it is astounding that a person involved in law enforcement from any perspective, would characterize the ACLU whether I would agree with the American Civil Liberties Union or not, would characterize their movement in our society as a lobby for criminals. It is clear that the Pacific Law Journal did not say that.

So, therefore, in his own mind he came to the conclusion, based on the fact, that there was a growing number of organizations in our society that were lobbying for criminals.

They were lobbying for moving from the indeterminate sentence to the determinate sentence and, obviously, in doing that at the State level there was some issue about what the appropriate fixed terms would be.

But I do not think anyone who was involved in that whole discussion, including the Governor, who was at that time Governor Brown, or any of the more significant points of view, felt that the American Civil Liberties Union or any of the other organizations were lobbying for criminals. To think that the man who is the Attorney General of the United States would hold that thought, I think, in and of itself, almost speaks to his failure to be impartial and objective and to perceive real problems in our society.

Senator **Kennedy**. Just finally, is it your sense, I gather it is, and I gather that is what your testimony is, that based on the record, there is a very significant group of Americans who do not perceive that Mr. Meese would be a forceful advocate of the law if he had a serious personal reservation about it?

Mr. **Dixon**. I think there is a significant group of black Americans, if not all but a very few, who feel that he would not be impartial, that rather he would be a strong advocate in certain areas, but certainly not impartial.

Senator **Kennedy**. Thank you, Mr. Chairman.

Senator **Specter**. Senator Metzenbaum.

Senator **Metzenbaum**. I did not hear all of your testimony, Mr. Neas and——

Senator **Specter**. Senator Metzenbaum, we have not proceeded to questioning the panel yet.

Senator **Metzenbaum**. I appreciate your testimony.

Let me ask you one question. Senator Biden, in inquiring of Mr. Meese yesterday, or rather Friday I guess it was, Mr. Meese pretty much gave us the impression that in many of these matters having to do with the *Bob Jones* case and Legal Services Corporation and various other matters, that all of us had come to believe that he is the captain of the team, subject only to the President, and that he was the person with whom negotiations would go on in connection with civil rights appointees and the Civil Rights Commission. We had all come to believe that he was the one who called the shots pretty much.

You are the leader of the Congressional black Caucus. Has it been your view that in these areas, as well as in areas of concern to blacks and the impoverished of this country, that many of the policy decisions do not in fact—we all did think came under the direction of Ed Meese.

Mr. **Dixon**. Senator Metzenbaum, the answer is obviously yes. As I indicated to Senator Kennedy, although I had no contact with the White House during the civil rights restructuring, it was clear from every impression I had that the representative in the White House was Edwin Meese. He said no, and I am not denying that we certainly could have made a mistake, but it was a clear impression that he was calling that shot. At least he was signing off on the relationship and the restructuring of the civil rights community.

But even if you disregard, which I think we should not do, those things that we are not clear as to whether he had input into, and you just take his statement alone, it would lead one to believe that he concurred in those decisions that have been made regarding the *Bob Jones* case to the Civil Rights Commission.

So even if he was not directly involved, I say, one, I am sure he concurred in the opinion that was reached by the White House and, two, as counsel to the White House, I think it is fair to say that he should have been involved.

Senator **Metzenbaum**. I thank you, Congressman Dixon.

Senator SPECTER. Congressman Dixon, when you started your testimony about Mr. Meese, you said that he meets minimum standards. As you proceeded to elaborate your views on Mr. Meese, it may be that your testimony was of a substance that he did not meet the minimum standards. But if in fact you do stand on the statement that he meets minimum standards, given what Senator Kennedy has described as the presumption in favor of the President or, more broadly stated, if he does meet minimum standards should not he be confirmed on that basis.

Mr. DIXON. I would say to you no. The role of confirmation is one, I guess, that any person has a right to establish their own minimum standards. In the broad sense you are right, Senator Specter, I would say he does not. But in the general sense, yes, he meets the general standard, that is he is a qualified attorney and that he has some experience.

What I was trying to say in my testimony is that that minimum standard is not good enough in this day and age in our society, that the Attorney General of the United States should not just meet the minimum standards, that he should be a person that everyone feels and has trust in, that will be impartial, that understands problems in our society as they relate to civil rights and liberties or the pursuit of criminal justice.

So, from that point of view, it is just a matter of semantics. He does not meet minimum standards. But certainly as far as the minimum standards to be offered up, I would not argue with that. I would say that it should take more than minimum standards in our society today to confirm the Attorney General of the United States.

Senator SPECTER. If you are talking about someone for Attorney General, you would not be talking about someone who is simply a qualified attorney, that is a member of the bar, or who had some experience. So when you said that he meets minimum standards, you were not referring to minimum standards for the Attorney General because if you were saying that, he meets minimum standards for the Attorney General, and you may have some criticism of him, given your own perspective—but if he did meet the minimum standards for the Attorney General, then I think there would not be a quarrel for an affirmative vote for him.

Mr. DIXON. Senator, I will not argue with you. It now becomes a matter of semantics. Perhaps for me to say in the totality he meets minimum standards was not appropriate. But I am trying to be honest and candid. I certainly do not think he should be confirmed.

Senator SPECTER. Congressman Dixon, we do appreciate you coming. We value your views of the Black Caucus, the 21 Congressmen you represent.

We thank you for being here.

Mr. DIXON. Thank you for your courtesy.

[Prepared statements follow:]

STATEMENT OF CONGRESSMAN JULIAN C. DIXON
CHAIRMAN, CONGRESSIONAL BLACK CAUCUS
MARCH 2, 1984

THE CONGRESSIONAL BLACK CAUCUS APPRECIATES THIS OPPORTUNITY TO VOICE OUR CONCERN OVER THE NOMINATION OF EDWIN MEESE FOR THE POSITION OF U.S. ATTORNEY GENERAL.

IT IS DIFFICULT FOR ME TO TESTIFY AGAINST A FELLOW CALIFORNIAN AND A MAN WHOSE EDUCATIONAL AND PROFESSIONAL BACKGROUND GIVES HIM THE CREDENTIALS TO QUALIFY FOR THIS POST.

HOWEVER, I AM OBVIOUSLY CONCERNED WITH THE ISSUES HE WOULD PURSUE AS ATTORNEY GENERAL AND THE IMPACT THEY WOULD HAVE ON THE PEOPLE WHO CONCERN ME MOST -- MINORITIES AND THE POOR.

THE CAUCUS' OPPOSITION IS NOT DIRECTED AT ED MEESE THE MAN, BUT RATHER IT IS DIRECTED AT HIS EMBODIMENT OF THE REAGAN PHILOSOPHY.

IT IS A PHILOSOPHY THAT IS DETRIMENTALLY PARTISAN, EXTREMELY INSENSITIVE TO THE NEEDS AND CONCERNS OF THOSE MOST IN NEED, AND WEIGHED HEAVILY AGAINST THOSE WHO DEPEND ON OUR GOVERNMENT FOR SOCIAL JUSTICE.

FOR EXAMPLE, MORE AMERICANS ARE LIVING BELOW THE NATIONAL POVERTY LEVEL THAN ANY TIME SINCE 1965. MAYORS ACROSS THE NATION HAVE NOTED THE RISE IN THE NUMBER OF HUNGRY PEOPLE REQUESTING PUBLIC ASSISTANCE AND NOW DESCRIBE HUNGER AS ONE OF THE MOST SERIOUS PROBLEMS IN OUR CITIES.

OVERWHELMING PUBLIC CONCERN FOR THE PLIGHT OF THE HUNGRY COMPELLED THE PRESIDENT TO FORM A TASK FORCE TO STUDY THE PROBLEM AND RECOMMEND SOLUTIONS.

YET BEFORE THE TASK FORCE COULD COMPLETE ITS WORK, MR. MEESE WAS QUOTED IN THE NEW YORK TIMES AS STATING THAT HE HAD SEEN NO AUTHORITATIVE EVIDENCE OF HUNGRY CHILDREN, AND THAT "PEOPLE GO TO SOUP KITCHENS BECAUSE THE FOOD IS FREE AND THAT'S CHEAPER THAN PAYING FOR IT."

THESE STATEMENTS ARE MORE THAN INAPPROPRIATE. THEY REFLECT AN INSENSITIVE DISREGARD FOR PUBLIC CONCERN THAT IS TYPICAL OF THE REAGAN ADMINISTRATION -- A DISREGARD THAT HAS BEEN VISIBLE IN MUCH OF MR. MEESE'S PUBLIC RECORD ON CIVIL LIBERTIES.

ADMINISTRATIVE EFFORTS TO REPEAL THE IRS REGULATION BARRING TAX EMEMPTIONS TO DISCRIMINATORY SCHOOLS IS A CASE IN POINT.

IN 1970, PRESIDENT NIXON CHANGED IRS POLICY REGARDING TAX EXEMPTIONS IN RESPONSE TO AN INJUNCTION WON BY CONCERNED PARENTS IN MISSISSIPPI.

THESE PARENTS FELT THAT GIVING TAX EXEMPTIONS TO DISCRIMINATORY SCHOOLS WAS IN CLEAR VIOLATION OF THIS NATION'S LAWS AGAINST RACIAL DISCRIMINATION.

THE INJUNCTION WAS MADE PERMANENT IN 1971, AND THE JUDGE MADE IT CLEAR THAT HIS RULING IN THE CASE EXTENDED BEYOND MISSISSIPPI. THE SUPREME COURT UPHELD THAT DECISION.

AS A RESULT OF THESE RULINGS, IRS REGULATIONS WERE CHANGED TO REDEFINE CHARITABLE INSTITUTIONS FOR PURPOSES OF GOVERNMENT TAX EXEMPTIONS.

IN A CASE FILED BY BOB JONES UNIVERSITY TO HAVE THEIR EXEMPTION REINSTATED, THE 4TH U.S. CIRCUIT COURT OF APPEALS SPECIFICALLY STATED THAT

> "BOB JONES UNIVERSITY'S RACIAL POLICIES VIOLATED CLEARLY **DEFINED** PUBLIC POLICY, ROOTED IN OUR CONSTITUTION, CONDEMNING RACIAL DISCRIMINATION AND, MORE SPECIFICALLY, THE GOVERNMENT POLICY AGAINST SUBSIDIZING RACIAL DISCRIMINATION IN EDUCATION, PUBLIC OR PRIVATE."

CONGRESS, THE COURTS, THE IRS AND THE AMERICAN PUBLIC HAVE ALL AGREED THAT DENIAL OF EXEMPTIONS TO DISCRIMINATORY SCHOOLS IS CORRECT GOVERNMENT POLICY.

YET THE ADMINISTRATION IGNORED THIS SUPPORT AND MOVED TO REPEAL THIS POLICY THAT HAD BEEN IN EFFECT FOR 11 YEARS. DEPUTY CHIEF OF STAFF MICHAEL K. DEAVER WAS CORRECT WHEN HE STATED:

> "ALL OF THOSE INVOLVED FAILED TO SEE THE SENSITIVITY OF THE ISSUE."
>
> -- Washington Post, 1/17/82 p. a9 --

AS DOCUMENTED IN THE NEW YORK TIMES, MR. MEESE INDICATED THAT WAS THE HIGHEST LEVEL OFFICIAL INVOLVED IN THE DECISION TO REPEAL THE IRS REGULATION BEFORE IT WAS DISCUSSED AT A SENIOR STAFF MEETING A DAYOR TWO BEFORE IT WAS OFFICIALLY ANNOUNCED.

MR. MEESE'S MOST TELLING COMMENT IN THIS MATTER CAN BE QUOTED FROM THE WASHINGTON POST:

> "[LIFTING THE IRS REGULATION] CAME UP AS NOT ALLOWING BUREAUCRATS TO MAKE SOCIAL POLICY. THAT'S ALL."

UNFORTUNATELY, THAT'S NOT ALL. THE IRS REGULATORY DECISION WAS THE LEAST IMPORTANT ASPECT OF THIS ISSUE. THE ADMINISTRATION'S PRIMARY CONCERN SHOULD HAVE BEEN WHAT TYPE OF IMPACT SUCH A FUNDAMENTAL SHIFT IN GOVERNMENT POLICY WOULD HAVE ON THE PEOPLE OF THIS NATION.

IN A INTERVIEW WITH THE NATIONAL LAW JOURNAL JUST OVER A YEAR AGO, MR. MEESE STATED:

> "....IF YOU HAVE A DECISION THAT YOU MAKE ON POLICY GROUNDS THAT HAPPENS TO GO AGAINST A PARTICULAR SPECIAL INTEREST GROUP, YOU DON'T GO TO THAT GROUP AND ANNOUNCE IT, OR CONVERSELY, YOU TRY TO GET TO THAT GROUP AND EXPLAIN WHY YOU'RE DOING IT BEFORE YOU ANNOUNCE IT."

IT IS UNFORTUNATE THAT MR. MEESE CHOSE TO DO THE FORMER IN THE TAX EMEMPTION CASE. IT IS ALSO UNFORTUNATE THAT HE APPARENTLY VIEWS THE LARGE MAJORITY OF AMERICANS OPPOSED TO DISCRIMINATORY PRACTICES IN THE NATION'S SCHOOLS AS A "PARTICULAR SPECIAL INTEREST GROUP."

THIS WOULD NOT BE THE FIRST TIME THAT MR. MEESE HAS CHARACTERIZED A GROUP OF PEOPLE.

IN MAY 1981, SPEAKING BEFORE THE CALIFORNIA PEACE OFFICERS ASSOCIATION, MR. MEESE SPOKE OF THE EMERGENCE OF A "CRIMINALS' LOBBY" IN AMERICA.

FOR PROOF, HE CITED A FOOTNOTE TO A 1978 ARTICLE IN THE PACIFIC LAW JOURNAL WHICH HE SAID LISTED 9 OR 10 DIFFERENT ORGANIZATIONS --WHICH INCLUDED THE ACLU -- THAT HAVE NOW FORMED

> "A CONSISTENT BODY OF LOBBYING WHICH IS REGULARLY OPPOSED TO LAW ENFORCEMENT."

UPON CLOSER EXAMINATION ONE WILL DISCOVER, AS HAS HAPPENED TIME AFTER TIME IN THIS ADMINISTRATION, THAT MR. MEESE HAS DRAWN THE WRONG CONCLUSION FROM HIS "PROOF."

THE ARTICLE IN WHICH THE FOOTNOTE APPEARED WAS A HISTORICAL ANALYSIS OF THE DEBATE OVER THE ADVANTAGES OF THE INDETERMINATE SENTENCE VERSUS THE FIXED TERM. ONE FOOTNOTE SIMPLY SAID THAT THE ACLU HAD TESTIFIED AT A STATE SENATE HEARING ON THE ISSUE, ALONG WITH GROUPS REPRESENTING PRISONERS, JUDGES AND CORRECTIONAL OFFICIALS.

A SECOND FOOTNOTE DESCRIBED THE ACLU AND THE OTHERS AS PART OF "WHAT WAS LOOSELY REFERRED TO AS THE LIBERAL COALITION" ON THE ISSUE.

OBVIOUSLY TO MR. MEESE, "WHAT WAS LOOSELY REFERRED TO AS THE LIBERAL COALITION" IN THE FOOTNOTE BECAME "CRIMINALS' LOBBY."

'R. MEESE'S FACTUAL ERROR IS UNIMPORTANT. WHAT WE MUST QUESTION IS MR. MEESE ABILITY TO IMPARTIALLY ENFORCE THE LAWS OF THIS LAND. IT IS OUR RESPONSIBILITY TO ASK:

WHOSE CIVIL LIBERTIES WILL BE JEOPARDIZED IF MR. MEESE IS UNABLE TO PUT ASIDE HIS CONTEMPT FOR INDIVIDUALS AND GROUPS WHO, IN HIS OWN MIND, RADICALLY CHALLENGE THE ADMINISTRATION OF PUBLIC POLICY?

THIS QUESTION IS PARTICULRY RELEVANT GIVEN THE REAGAN ADMINSTRATION'S ACTIONS AGAINST THE CIVIL RIGHTS COMMISSION LAST YEAR.

IT IS DIFFICULT TO SPEAK CONCLUSIVELY ON EXACTLY WHAT TYPE OF TTORNEY GENERAL MR. MEESE WOULD BE, BUT THAT DOESN'T MEAN SOME ASSUMPTIONS CAN'T BE MADE.

THE REAGAN ADMINISTRATION HAS CAMPAIGNED IN FAVOR OF LEGISLATION AND REGULATORY CHANGES THAT WOULD DRAMATICALLY AFFECT MANY OF OUR BASIC CIVIL LIBERTIES.

THIS ADMINISTRATION TRIED TO NARROW THE SCOPE OF THE VOTING RIGHTS ACT; LIMIT THE ABILITY OF FEDERAL GRANT RECIPIENTS TO COMMUNICATE THEIR CONCERNS TO ELECTED OFFICIALS; ABOLISH FUNDING FOR THE LEGAL SERVICES PROGRAM; AND ERADICATE OUR MOST EFFECTIVE AFFIRMATIVE ACTION AND EQUAL OPPORTUNITY PROGRAMS.

AS THE NUMBER 1 SPOKESMAN FOR THE REAGAN ADMINISTRATION, ONE CAN NATURALLY ASSUME THAT MR. MEESE'S VIEWS WILL MIRROR THE PHILOSOPHY OF THE REAGAN ADMINISTRATION.

THE CONGRESSIONAL BLACK CAUCUS EMPHATICALLY REJECTS THIS TYPE OF PHILOSOPHY FOR THE OFFICE OF ATTORNEY GENERAL. AS THE NATION'S CHIEF LAW ENFORCEMENT OFFICER, HIS IMPARTIALLY AND FAIRNESS CANNOT BE QUESTIONED. THIS ADMINISTRATION HAS SUBMITTED A NOMINATION HAT BRINGS US TO THE CONCLUSION THAT A BETTER CHOICE CAN BE MADE.

WE HOPE THE MEMBERS OF THE JUDICIARY COMMITTEE WILL AGREE THAT THERE IS ADEQUATE REASON FOR CONCERN, AND THAT, IN THE INTEREST OF ALL AMERICANS, YOU WILL REJECT MR. MEESE'S NOMINATION.

TESTIMONY OF CONGRESSMAN JOHN CONYERS JR.
CHAIRMAN, HOUSE JUDICIARY SUBCOMMITTEE ON CRIMINAL JUSTICE
SENATE HEARINGS ON NOMINATION OF EDWIN MEESE III
FOR U.S. ASTTORNEY GENERAL
MARCH 5, 1984

Mr. Chairman, I appreciate the opportunity to be here this morning to express my concerns regarding the nomination of Edwin Meese for the position of U.S. Attorney General.

In advising and consenting to the nomination of Attorney General for the United States, it is of paramount importance to select an individual who has a history of unequivocal committment to the laws of the land as determined by the Constitution as well as by Congress. Yet what we are faced with, with the prospect of Mr. Meese as Attorney General, is an individual who has been directly involved in, and who is on record as supporting, numerous policies which exhibit utter contempt of Congressionally-mandated law. What the Senate would be doing by nominating Mr. Meese, is selecting an individual who has a track record of undermining these laws that we as an institution have worked so hard over the years to develop. For this reason, I adamantly oppose the nomination of Mr. Meese for Attorney General.

Mr. Meese's brief history as White House counselor evidences a consistant pattern of flaunting Congressional intent. In the Bob Jones University case, Mr. Meese had direct involvement in, as indicated by his own testimony Thursday, the Administration's opposition to an established Internal Revenue Service policy of denying tax exempt status to schools which discerminate on the basis of race. This position is in contradiction to an 11 year IRS policy which has been supported by numerous Congessional mandates, including a Senate Select Committee report which affirmed the "correctness of the policy". Even a report issued by the senior attorney's at the Justice Department concluded that "the actions of Congress since 1970 leave no doubt that the IRS reached the correct conclusion in exercising its authority".

Mr Meese's position on the Legal Services Corporation, that "funding should be abolished", despite Congressional authorization and, more recently, extension of the prorgram, also raises serious questions regarding his committment to Congressional mandate.

Mr. Meese was also aware of, and to some extent involved in, the Administration's opposition to a voluntary school desegregation program in Seattle. As indicated in his Thursday testimony, a memo addressed to Mr. Meese stated that the Administration would support the state of Seattle which was opposed to the plan, "for political reasons". This position is entirely inconsistent with legislative policy as enunciated in the Civil Rights Act of 1964 and in Title 20 of the 1974 Educationial Amendments which explicitly state that the Executive branch should aid, not impede, all school desegregation efforts particularly those that are voluntary. The Administration's position, supported if not developed by Mr. Meese, clearly impedes these voluntary efforts.

Title VII of the Civil Rights Act of 1964 empowers the Executive branch, particularly the Department of Justice, to vigorously enforce Equal Employment Opportunity using among its tools, litigation authority. Yet in 2 significant cases involving affirmative action in City Police Departments (New Orleans and Detroit where there is vast mionority underrepresentation in the local police departments) the Administration opposed both and Mr. Meese is on record as supporting both these positions. In the New Orleans incident, Mr. Meese was directly involved in the Administration's forcing of the Equal Employment Opportunity Commission to withdraw a brief which it had filed on behalf of those minorities who were discriminated against. The Administration's position in these two cases is part of a deliberate disregard of the interpretations of Title VII. Affirmative action, used as a remedy for correcting historically entrenched discrmination, has been approved of in more than 20 federal courts and appeals decisions.

Finally, Mr. Chairman, I am concerned about Mr. Meese's involvement in the gutting of the U.S. Commission on Civil Rights. The Nation's only civil rights agency charged with the responsibility for objective analysis of appraisal and civil rights laws and policies has been transformed into an instrument of presidential policy. The manipulation of the Civil Rights Commmision was so contrary to Congessional intent establishing the commission in 1957 and reauthorizing it in subsequent years, that Congress took upon itself the authority to appoint half of the commissioners. The White House officials, including Mr. Meese, then sabotaged a plan to insure the Commission's independence by repudiating key features of the agreement reached among Congressional leaders and the civil rights community. Mr. Meese was the White House Representative in this incident and was quoted as saying that he would take "drastic action" if the commission suggested legislative and policy changes inconsistent with the Administrations civil rights philosphy. Soon after the commission exercised its independent perogative to do so, it was fired.

Mr Chairman, the Administration has had a pattern on elevating ideology above law and although the extent to which Mr. Meese has been involved is not always crystal clear, it is safe to say that he has been, and will continue to be, inextricably bound to these policies.

Mr. Chairman, it makes no sense to appoint an individual as the peoples attorney if that individual will selectively flaunt, and thus unilaterally rewrite, the laws which we, as Congress, are constitutionally empowered to legislate.

Senator SPECTER. We will turn now to Mr. Roy Innis.

Mr. INNIS. Mr. Chairman, members of the committee, I thank you for allowing me to participate in this most important hearing, the confirmation of the Attorney General designate, Edwin P. Meese. I am particularly pleased to be here because I bring a different point of view, a point of view unique for one in my position or from my community.

Few offices in the executive branch of the Government demand the imperatives of sensitivity and understanding of the dynamics of the diverse sets of realities in America today, like the office of the Attorney General. This office requires an unswerving and courageous dedication to principle, to basic fairness, human decency, and justice. More than any other office, it interacts directly with people of all strata of society—from the very poor to the super rich. It can be aptly called the guardian of the 14th amendment of the Constitution.

I wish to condense my brief testimony in four general areas of critical concern.

Under the civil rights, I will deal with the area of school desegregation, affirmative action, and voter's rights.

Under the area of abuses in the criminal justice system, I will discuss abuse by prosecutors of grand juries, abuse by prosecutors and police of the criminal informer system, and abuse of counterintelligence programs.

Under the area of crime reduction, I want to deal with real versus statistical crime reduction, the setting of priorities for crime targets, and innovations for crime control.

And the final area, under antitrust laws, I will talk about pragmatic application of antitrust laws, consumers protection from adverse effects of suits, and the impact on quality and cost for goods and services after the settlement of suits.

But before dealing with these areas, I will touch briefly on the manner in which the leadership of my community evaluate candidates for public office.

In the past, we have overemphasized the political affiliation and ideological persuasion of the candidate with little regard for his basic character.

Edwin P. Meese is viewed as conservative, a Republican, insensitive to the poor, a hard-liner on crime, and a close associate of the President. To many of my colleagues, this automatically disqualifies him for this important position. But I am not a conservative, nor am I a Republican, nor, for that fact, am I a Democrat, nor a liberal. I am independent. I do not know the President personally, nor am I a close associate of his. But I am also very hard-nosed on crime. And while I do not agree with Edwin Meese's statement that "there is no hunger in America," I do believe, however, that there are abuses in America's hunger program. It is the careless administration of social programs and the exploitation of them by the greedy that expose the needy to attack like this.

As to his close association with the President, it appears to me that it is one of the key qualifications Ed Meese brings to this job. Most political prognosticators, including the leader of one of the most respected civil rights organizations, who incidentally is also not a close associate of the President and actively opposes him—are predicting that this President will be the next President of the United States. If this is so, by all means I want the President's closest associate to be in charge of this critical area of Government if he is intelligent, fundamentally decent, competent, accessible, and open to dialog with people of all points of view.

Mr. Chairman, I have broken with the traditional approach of my colleagues. On this issue, I march to a different drummer. I am familiar with the popularly accepted rhetorical characterizations of Edwin Meese, and I have rejected the way many of the colleagues relate to someone so defined. I have personally met with the nominee, and I have discussed issues of critical importance to my people. I have found him to be accessible, affable, and open to dialog. It is this openness to dialog that most influenced my opinion of Ed Meese. There were several points of agreement in our encounter. In fact, the most important one was his commitment to continued dialog with the black community.

I challenge my colleagues who have not yet met Ed Meese to avail themselves of this opportunity. To paraphrase another well-known civil rights leader, so that we can move past our differences to "a higher level of understanding * * * because our mission for * * * justice and freedom is a glorious one."

Mr. Chairman, the critical areas for my community in particular and the poor and disadvantaged of America are as follows:

In the area of civil rights enforcement, I have recommended to the nominee that he examine and refocus the Civil Rights Division of the Justice Department and restore the Community Relations component to its former prominence. Also, since there is no black in a senior position on the staff of the White House press office, I recommend that the nominee appoint a black person to a senior position in the Justice Department's press office. This should go a long way to improve the reporting and interpreting of actions taken by the Department that are of importance to the black community.

The black community is not wedded to forced busing as the only method to desegregate schools. However, the Justice Department should not advocate its abolishment without proposing alternatives so that those affected have a choice.

Affirmative action has been upheld by the U.S. Supreme Court. The Attorney General must police its implementation.

In the area of the abuses of the criminal justice system, we recommend that the Attorney General convene a special broadbased panel to investigate widespread abuse by Federal, State, and local prosecutors of grand jury powers. This panel should also look into ways to curb the overreliance on criminal informers by police and prosecutors. Many of these officials have become addicted to a "Joe Valachi"-"Jimmy the Weasel" syndrome. These "licensed" criminals pervert and corrupt the criminal justice system.

At all levels of government, the Attorney General must police the ban on counterintelligence programs directed against citizens and organizations in this country.

In the area of crime reduction, the Attorney General should not allow his staff to delude him with statistical crime reduction as a substitute for real crime reduction.

We recommend that he consult with the diverse communities across the country, particularly those with high crime rates, before setting priority targets in his efforts to reduce crime.

We recommend that the Attorney General impanel a diverse group of responsible leaders from high crime areas, especially when crime is out of control, to study the impact of overly rigid and restrictive gun control legislation on the growth of crime. The panel should study bold and innovative ways to directly involve decent and courageous citizens in the war against crime.

ANTITRUST LAWS

We recommend that before the Attorney General institutes any antitrust suits, he should carefully study the impact on the consumer as it relates to the quality and cost of goods and services. The divestiture of the telephone system, that followed an antitrust suit, is impacting negatively on the poor in my community in cost and services.

Senator **Specter**. Mr. Innis, you are now past your allotted time. If you could summarize. Your full statement will be included in the record.

Mr. **Innis**. Let me do my final conclusion then.

Finally, Mr. Chairman, I thank you and the members of this committee for allowing me to present a different point of view. America was founded on a different point of view and America still is a different point of view in our world today. This is why America is great.

We encourage the Attorney General designate to be vigilant with his commitment to dialog with those of different points of view, so that we can gain more understanding and respect for each other. This is our best hope for closing the gap of different between us.

Thank you.

Senator **Specter**. While this panel is still present, panel No. 1, has Ms. Judy Goldsmith or Mr. Jack Greenberg arrived?

Senator Biden.

Senator BIDEN. Thank you very much, Mr. Chairman.

Mr. Innis, your testimony is very straightforward and has some compelling aspects to it. Maybe I could pursue one of them.

It seems to me that what runs through the core of your testimony is that you are realistic; you figure this guy is going to win, and you might as well have access to him.

Do you have the impression, from your discussions with Mr. Meese, that Mr. Meese will continue to have that kind of access to the President?

Mr. INNIS. Yes. I assume from what I have read, and what I do know about Mr. Meese, that he is, aside from being a political ally, a friend of the President.

Senator BIDEN. But beyond what you have read, you say you have had a chance to discuss with him the issues relating to access to the American black community. Did you get the impression from him, or a commitment from him that he would be able to maintain that access to the President of the United States, or was this merely to the Justice Department itself?

Mr. INNIS. He made an absolute commitment to continue dialog with the black community. As to his ability to continue dialog with the President, I have to assume that they are friends, and since he was the President's counsellor, he will still have that access.

Senator BIDEN. My problem is that I got the impression from Mr. Meese during the 2 days he testified, that he really did not have that kind of relationship and access, and that, further, when he got over to the Justice Department, that he would really be taking a different role. He would even have less access, in terms of assuring, for example, that the views of the black community were communicated to the President.

You may be making the right play here, because his confirmation may be inevitable.

Maybe I am reading too much into your testimony. Maybe I should not be attempting to read between the lines, but it seems like you feel that you will have to play back because this guy will be back any way, and that is all right, but that will work only if he, Mr. Meese, as Attorney General, would have the ability to access the President for the black community.

Did you get a feeling he would be able to do that?

Mr. INNIS. I certainly would not want to prejudge the vote of this committee, but I have very little doubt that Mr. Meese will be confirmed by this committee. That is one.

I have very little doubt, and that is not just a prognostication, that President Reagan is going to repeat. I am not praying for this, but I think it is going to happen. If those two things are going to happen, I have very little doubt that his old buddy, Edwin Meese, will be inside barriers over at the Justice Department. I think he will be counsellor, as all of the previous Attorneys General have been to their friends, the Presidents.

Senator BIDEN. I think you are a pretty perceptive fellow.

The other question I would like to ask you is do you think that Mr. Meese is going to have input as Attorney General to the President in this upcoming Presidential campaign?

Mr. INNIS. Yes, like all previous Attorneys General.

Senator BIDEN. So do I. Now, let me ask Mr. Neas a question: On the question of the Bob Jones issue, do you agree with Mr. Meese that the administration's role in that case was that of disagreeing on the interpretation of an unclear law, or do you believe that they were trying to change the established interpretation of a law?

Or let me put it another way: They say that really what they're getting at here was they didn't want bureaucrats making laws. Do you believe that was their motivation?

Mr. NEAS. Absolutely not.

Senator BIDEN. What do you think the motivation was?

Mr. NEAS. I think the law, Senator, was clear for more than a decade, the statutory authorization, for the IRS position. It was affirmed by the Supreme Court in the *Green* case, I believe in 1971.

This Nixon initiated policy was the law for many years, and when I addressed the issue in my prepared text about *Bob Jones* I said it was reprehensible enough that the administration would want to overturn a decade of established law.

But most important in the analysis was how they went about it. They didn't go to the Court to ask for the Court to review the case. They didn't go to the Congress with legislation. They made a unilateral decision, on January 8, to overturn a well-established policy and to ask the Supreme Court to not even hear the case.

That's what I meant about fidelity to the law.

Senator BIDEN. Let met ask you about fidelity to a deal. I spent more time with you than I like to admit, and with others in the community, and with Senator Dole and others negotiating, literally for months, a Civil Rights Commission compromise.

We thought we had a compromise twice. At the last minute, well into the night, I walked out with Bob Dole and said, well, we have a deal as to specific names.

And someone—I don't remember who, I thought it was the Senator—but someone had a piece of paper with actual names on it of who would be appointed to what spot by whom in the new makeup of the Commission.

And at that time someone from your organization said, "Senator Biden, get it in writing." And I said there's no need to get it in writing—showing how bright I was. There's no need to get it in writing. This agreement has been made, and I accept the assertion that it will be kept.

Needless to say I was surprised to find out it was not.

Now, Mr. Meese tells me—he told me privately and publicly in this hearing—that he never was aware of any particular names, nor did he agree to any particular names.

Now, this goes not to the question of whether they have the right, but whether or not there is the intent to abide by not only the law, but abide by understandings that are made between the branches of Government.

Will you give me your impression as to what degree you think Mr. Meese played a role on that last night when we got down to the last hour of making an agreement with all the parties?

What role were you led to believe, or did you lead yourself to believe, he was playing?

Mr. NEAS. Senator, your question reminds me of your questioning last Friday when you asked Mr. Meese about his involvement in a number of civil rights issues as well as issues relating to criminal law enforcement. Mr. Meese really didn't give you any solid answers to your questions, and one got the impression that we, as some people might say, not only have a detached President, but counselors who don't seem to know anything, see anything or hear anything about the policies that are being pursued by the Reagan administration. And I think that's relevant to what was happening on November 10.

Mr. Meese was a part of the negotiation for many months, and as you say, on several occasions we had an agreement that probably 80-plus Senators had agreed to—everyone in town had agreed to, but we were told, after Mr. Meese talked to at least 4, 5, or 6 of the Senators that there was not going to be any compromise. He would not accept the conditions that had been worked out by a bipartisan majority.

On November 10, we went into that day——

Senator BIDEN. Did other Senators tell you that Meese would not sign, or Meese would not do such and such?

Mr. NEAS. Absolutely, Senator, that they were talking directly during October with Mr. Meese.

Senator BIDEN. Now, how about taking me up, because I don't want my time to run out. I have a question for Mrs. Simmons.

Take me up to the last night.

Mr. NEAS. The last day or two, for Mr. Meese to say that names weren't discussed defies comprehension. Names had been discussed for months, and the discussions became really hot and intense November 9 and 10.

Senator BIDEN. Again, now, you never spoke to him about any names, did you?

Mr. NEAS. We tried, Senator. At least two senators asked Mr. Meese to meet with me, Althea Simmons and others. But Mr. Meese, who prides himself on his accessibility, and has promised accessibility if he is named Attorney General, refused to meet with us.

Senator BIDEN. Let me ask you, you did not speak directly with him for whatever reasons, I did not speak directly with him I can tell you, and some would suggest that it's unfair that either of us would have such a firm notion that he was so directly involved.

What is the basis of your believing that he, in fact, was on the other end of a line with anybody, telephone line, saying yes, we'll agree to that person, or no, we won't agree to that person? Why do you believe that?

Mr. NEAS. Senator, in those 16 straight hours of negotiations on November 10, you and I and many representatives of the civil rights community, Senator Specter, Senator Kennedy, Senator Metzenbaum, and Senator Dole were engaged in those discussions.

White House personnel were there the entire time. Senator Baker's staff was there the entire time. We talked to one another during these entire 16 hours. We were told what the White House would not accept, what we would accept, would not accept.

We were told at approximately 11 o'clock that Senators Dole and Baker would be talking with Mr. Meese around midnight. I cannot tell you specifically what was said at midnight of November 10.

And I'm not even sure, Senator, that is the central issue that you want to discuss.

I think that as important as giving one's word, as important as the compromise is, the central question is why did Mr. Meese, after the compromise had been accepted by the Senate, by the House, by seemingly everyone in Washington, DC, 3 weeks later repudiate the compromise.

Senator BIDEN. Well, he says because the White House never signed on to anything like that, and the President didn't want it that way, and he never agreed to it that way, and that's why he didn't.

In fairness to him, he'd say that just because all of Washington agreed didn't mean he had.

Mr. NEAS. Senator, again, the bottom line issue is why would Mr. Meese recommend to the President of the United States that he fire Mary Louise Smith, that he fire Jill Ruckelshaus, that he fire Steven Horn and Arthur Fleming 2 years before.

Why was the White House getting rid of these moderate Republicans, conservative Republicans, a former chair of the Republican National Committee, a former secretary of HEW under Eisenhower, a conservative Republican, and Jill Ruckelshaus, the wife of Bill Ruckelshaus who had saved the administration's political fannie on EPA?

Why? Because they wanted to silence the dissent coming from the Civil Rights Commission and control the Commission. This was the central issue for 7 or 8 months. And time after time, including this period of time you're referring to, Mr. Meese was responsible for the administration's position and recommendations to the President.

Senator BIDEN. So you say that's what we should be looking at.

Mr. NEAS. That's the central issue. Why did they act inconsistently with 26 years of precedent, law, and history?

I would like to read Senator Specter's letter, or just a paragraph of it, to the President on July 29. No one addressed this issue better than Senator Specter in this letter when he tried to preserve not just the Commission, but an independent Commission.

He asked the President to withdraw those three nominees.

Senator BIDEN. Read it.

Mr. NEAS. This is the fifth paragraph. "In the context where you will be replacing five of six Commission members in an unprecedented manner during the 26-year life of the Commission, there is substance to the objection raised by so many witnesses that the character of the Commission is being inappropriately reshaped by one administration, which is contrary to the intent of Congress and the continuity of independence of the Civil Rights Commission.

"The substance, as well as the perception, is that the institutional independence of the Commission would be altered."

We never stated it any better, Senator.

Mr. BIDEN. Ms. Simmons, let me ask, if I can, just one more quick question, and it's the only one I'll ask, with the chairman's permission.

I asked Mr. Meese whether or not there were any laws on the books relating to civil rights that he thought should not be there. Was he going to attempt to narrow any of the existing legislation relating to civil rights? Did he feel compelled to move against any existing laws?

And the answer to that was a clear "No." Now, you say that you are concerned that he is narrowing the rights of black Americans, that he doesn't understand the problems, that he in fact is not impartial.

And Mr. Neas suggests in his statement we should ask Mr. Meese back. But Mr. Meese has already directly answered those questions.

I guess you just don't believe him?

Ms. SIMMONS. My fears were not allayed by his responses. His responses, as you will recall, Senator, were very narrow. And he either, could not deal with hypotheticals, or stated he felt it was inappropriate to make some comments.

Senator BIDEN. I want to be clear now. I asked him very specifically.

Ms. SIMMONS. I am aware of that.

Senator BIDEN. And it was a very broad range of laws. I said all the civil rights laws, and he answered "none."

Ms. SIMMONS. Yes, he did answer that way. We still do not feel that Mr. Meese could be—we don't believe he's sensitive enough to civil rights issues. We do not believe, for example, that he will change the composition of the Department of Justice that is now narrowing civil rights laws.

The New York Times article today—with reference to where the Justice Department is—does not give us any hope that there will be any change in policy.

We do believe, that Mr. Meese will not be the attorney for the people. We think he'll be the attorney for the President, and I think that is a basic difference.

Senator BIDEN. Very bluntly, that's my overwhelming concern, that last point you raised.

I thank the chairman and my colleagues for their indulgence in allowing me to go over my time.

Senator SPECTER. Senator East?

Senator EAST. Thank you, Mr. Chairman. I appreciate the opportunity to speak briefly this afternoon at these continuing hearings on the confirmation of Meese to be the Attorney General of the United States.

I would like to make some observations in defense of Mr. Meese, and, frankly, the Reagan administration in general.

I think that it is somewhat unfair to make the charge, as some of the opponents of Mr. Meese and the administration do, that if you do not agree with the means of getting to a particular goal, then you are, therefore, opposed to the goal itself.

For example, in other areas in the Congress, I might have a particular way in which I believe that communism ought to be fought. But someone on the other side of the aisle might disagree. But that would not make them pro-Communist; it would simply mean that they disagree with the means by which I would seek to counteract the totalitarian challenge itself.

Or consider the area of the defense budget. I might support the B-1 bomber, or the MX missile, and they might oppose it. But would I be fair in saying they are antidefense, and they want to leave America defenseless? Certainly they would resist that idea.

They would resist being labeled pro-Communist, and rightly so and they would resist being told that they were antidefense or that they are for unilateral disarmament.

We find, do we not, in this great, free, deliberative Republic, as we find it in the U.S. Senate, that fairminded and reasonable people can disagree over the means to an end.

Now, in the context of civil rights, the end that we're seeking is a society in which people are evaluated on the basis of their merit, and their individuality, and not by the color of their skin, their race, color, creed, or national origin.

Personally, I don't know of anyone in the Justice Department's Civil Rights Division, who has not indicated that we share that goal with our distinguished opposition. President Reagan, too, shares that goal.

But we do reserve the right to disagree over certain means to the end. But when we don't agree with the means of the opposition, then they impugn our motives with regard to the goal.

For example, let me cite the concept of quotas. If affirmative action really ends up being a quota system, and one, if you will, of reverse discrimination, then it is a fair question to ask whether that is a violation of the equal protection clause of the 14th amendment. Supposedly, at least in *Brown* v. *Board of Education,* and in other cases, the clause requires a colorblind application of the laws.

I think that is an eminently fair, honorable, and reasonable question to ask.

I believe that those in the administration, Assistant Attorney General William Bradford Reynolds for example, often has his motives questioned because he has indicated for example, that he does not think that forced busing has been the best answer to the question of better schooling for all Americans, whether black or white.

He emphasizes, for example, the "magnet school." He emphasizes that there can be alternatives. That in fact forced busing has not worked well, that it has, in fact, not been accepted by many in the black as well as in the white community. It hasn't been accepted because it seems to be contrary to the concept of neighborhood, of community, and so forth.

All I am saying is that you can disagree over such things as whether busing is an acceptable means to an end, or whether quotas are not inconsistent with the Constitution.

And I think that in the case of Mr. Meese, and the President, it is unfair to say that they do not share the goal. They've said time and time again that they do.

But certainly we can reserve the right to disagree over the means to the end as we do in so many other areas. I've already mentioned examples. What is the most effective way to have a sound national defense?

There are different means to the same end. To deny that is a disservice to intelligent, civil, and deliberative dialog on these very critical matters. This is a very critical matter, namely, how people are judged in this country, and whether we are eliminating such arbitrary barriers as race, color, creed, and national origin, and so forth in evaluating people.

And we have had sex discrimination, and discrimination on the basis of physical disability. We have had that as part of our heritage. It's not been a pleasant one, and we've worked at ridding ourselves of it.

I find often, for example, that I am asked about the rights of the physically handicapped. I'm a part of that group. But I sometimes have to disagree with my colleagues on the question of the physically handicapped.

I think sometimes that handicapped rights groups sometimes don't support investing the Federal dollar as wisely as we might. Maybe excessive demands sometimes are made, there are disagreements on the best means to the end.

But I, for heavens sake wouldn't disagree with them on the end. I, of all people, have been proving that opportunities for disabled people do exist in American society.

So I sometimes find myself in the awkward position of appearing to be at odds with the people with whom I have the most profound affinity.

Now, I would like to make an observation regarding the Civil Rights Commission. We have a black chairman of the Civil Rights Commission for the first time, Clarence Pendleton.

I think that it takes a lot of courage for a man like Mr. Pendleton to take the position that he does. He was in the Urban League, one of the distinguished civil rights organizations in this country.

He happens to disagree with other members of the civil rights movement over certain means to the common end. I think he takes a pretty cruel pounding from those who ought to understand that the major problem that they have with him is not the goal. And the major problem they have with the President is not the goal. Or the major problem that they have with Mr. Meese and Mr. Reynolds, or others such as myself, is not the goal, but primarily the means.

I think that I've run out of my time, but I think that the record ought to show, that for reasonable minds to differ over the means to agreed upon ends is not an uncommon thing in a democratic society and in a free republic.

The idea that if you don't agree with the means to the end you are in someway disloyal is wrong.

It isn't true. I don't think that it's true with Mr. Meese, I think that the record will bear it out. And I would submit that the record of William Bradford Reynolds has been a solid one, and a good one, and a fair one.

I don't think that there is a trace or a scintilla of bigotry in his own personal values and in his efforts to enforce the civil rights laws of our country. He is simply disagreeing, from time to time, on certain means, just as Clarence Pendleton is doing.

So it is too with Mr. Meese. I want the record to show that, and I appreciate the opportunity, Mr. Chairman, to come in and to put in a word in defense of the President's nominee, and in defense of this administration.

I hope that the discussion and the hearings can be conducted within that framework and within that understanding rather than constantly challenging the commitments and the loyalties of one another.

I thank the distinguished chairman for the opportunity to appear and to comment upon this very critical subject.

Senator SPECTER. Senator Kennedy.

Senator KENNEDY. Thank you. I think that I would like to ask Mr. Neas whether he believes that the position of the administration on the enforcement of civil rights laws is merely a disagreement over means, not of ends?

Mr. NEAS. Thank you for asking me that question, Senator. Senator East, before you came, I did address that issue, and I'm sorry that we missed one another.

The leadership conference, which hasn't opposed a Presidential nomination at a Cabinet level or Supreme Court level in about 12 years, does not oppose Mr. Meese because of differences on substantive policies.

If we had taken that stand, believe me, over the last 12 years it would have been more than a few nominations that we would have opposed.

We oppose Mr. Meese because we do not think based on our observations over the last 3 years that Mr. Meese, as the chief law enforcement officer, would enforce the laws objectively and vigorously.

We do not believe that this adminstration has been enforcing the laws. It's not a question of means. I agreed with almost everything that you said with respect to vigorous debate about means.

What I have tried to convey in my testimony is that we believe that the law as passed by the Congress and as interpreted by the Supreme Court has been ignored, has been defied. We're concerned about fidelity to the rule of law. That's the central issue for us in this hearing.

We don't think that Edwin Meese, based on the last 3 years, will be true to the rule of law. That's the issue for us, Senator.

Senator EAST. Senator Kennedy, if I might respond briefly.

Senator KENNEDY. I'd be glad to yield.

Senator EAST. Thank you, Senator. It seems to me that, of course, at some point, that becomes an unanswerable charge. You're dealing with the inner recesses of a man's mind and soul, a very subjective sort of thing. And only Mr. Meese can answer that question.

But I would contend, very strenuously, that you are using William Bradford Reynolds, who has been in charge of the Civil Rights Division, the critical division in the Justice Department on this matter, as a focal point for the suggestion that this administration lacks commitment.

It seems to me that by implication, therefore, you say that Mr. Meese lacks this commitment.

There is not a scintilla of prejudice or bigotry in Reynolds that I've ever been able to see. And I think that he is trying, as objectively, and effectively, and as vigorously as he can, to see that the laws of the land are fully and completely carried out.

As you well know, as all attorneys know, reasonable minds can sometimes differ over interpretations of statutes. Eventually, you're once again back into the questions of means to ends.

But I think a blanket charge that Mr. Meese is simply uninterested in vigorous law enforcement in the civil rights area in this country simply becomes an unanswerable charge. And each is free, I suppose, to believe what he wants to believe, and to state what he wants to state.

I could state that I think someone is pro-Communist, that I just have that feeling inside that they are. Or I could say that I think they believe in unilateral disarmament, that they want to strip America down and make her naked before her enemies.

I could assert that as a charge. I could say that I think that is their inner motivation. There is no way to refute it, because, if I choose to believe it, and I choose to publicly say it, what can they do?

And I don't know what else Mr. Meese can do or the President can do, or Mr. Reynolds can do. I would submit that if you get down to the hard facts of what has occurred, you will find that he has represented well the policies of President Reagan and Attorney General Smith.

I haven't seen any evidence that Mr. Meese wishes to depart from that. What is the record of William Bradford Reynolds? I would submit that it's a very commendable one.

I think that certainly his personal commitment and motivation are impeccable.

Mr. **Neas**. Senator, we never discussed the motivation. You might remember from the Voting Rights Act struggle, the intent issue for us is not the central issue. We don't want, and should not try to figure out what motivates people to do certain things, as important as that may be.

We've never accused of .course, the President or Mr. Meese or Mr. Reynolds or Mr. Smith of having a prejudiced bone in their body, or whatever they call it.

That for us is not the question. The question is what are their policies, whether or not they're enforcing the law of this land.

We think that Mr. Reynolds and Mr. Smith and Mr. Meese, on occasion after occasion, have said that they're not going to enforce certain laws or certain Supreme Court decisions. It's like the Michael Uhlmann quote, one of the Meese assistants, when they asked him whether or not the executive branch was enforcing the law, and he replied of course we're enforcing the law, "unless you call all the decisions of the Supreme Court the law of the land."

I think that quote explains much of the actions of the Reagan administration at Justice and at the White House. They selectively choose the laws which they are going to enforce. They do not enforce the laws with which they disagree.

Senator **Kennedy**. I would like to continue questioning. I wanted the Senator to have a chance to respond since the first question was directed right at the point he was making. If there is a brief comment that the Senator would like to make, I would yield to him, otherwise I would like to use my time.

Senator **East**. Thank you. I yield back to the Senator. I appreciate it.

Senator **Kennedy**. If there is a brief final comment, I would be glad to yield that time.

Senator **East**. You know, with we Senators, nothing is ever brief and final, but I shall try to be so, and I appreciate the Senator's allowing me to say a final word.

I think again, Mr. Neas, that that's a very broad based charge. I suppose you and I could go on *ad nauseum* on this point, but I still think that what you're saying gets back to motivation and commitment.

And there's no way that one can answer that. I would simply urge that anyone who is critical of this administration, and of the potential of Mr. Meese, or the general policies of the Justice Department, examine the record of William Bradford Reynolds. I think that it's a fair and equitable one. And not only in terms of his personal commitment, but in terms of his desire genuinely and honestly to enforce the laws of the United States as passed by Congress, and as mandated by the Supreme Court.

To me the record is there. Now some may say that it isn't. But I realize that could be a long and protracted debate. So I yield to the distinguished Senator from Massachusetts.

Senator **KENNEDY**. I would point out that my time has all been used up and now it's your time, Senator. So I would hope you would yield back your time to me.

Senator **EAST**. If that has occurred, then I will certainly yield back my time to the Senator from Massachusetts.

Senator **KENNEDY**. Thank you very much.

I know that William Bradford Reynolds is not before the committee at this time. But his statements and positions highlight the reasons that those of us who support civil rights are concerned about who will be running the Justice Department. For example, in the case of ***AFSCME* v. *State of Washington,*** Mr. Reynolds, who is the Assistant Attorney General for Civil Rights, was quoted as saying of Judge Tanner's order, "I have absolutely no doubt that his decision is wrong," and in the same breath indicated that he hadn't read the decision.

Now, I don't know whether that's really typical of how Mr. Reynolds comes to those kinds of conclusions, but I imagine that that has to be somewhat troublesome to some of those who believe in the rule of law and the continuing commitment to the rule of law.

Such a comment by Mr. Reynolds is particularly troublesome in light of the fact that so many civil rights issues seem to be decided, not in the Justice Department, but in the White House.

And somehow Mr. Meese always seems to be involved. And it always seems to be that he doesn't quite know what the merits are, but he knows that it's a political issue and people feel strongly one way or the other on it.

And it seems to be that the decisions that have been made by career lawyers in the Justice Department are always being overturned.

Now, that happens to be the record of this hearing over several days of questioning, and at least it raises some questions about Mr. Meese's commitment to the rule of law.

I want to move on, because we have other panels. I just have a few more questions.

Mr. Neas, you have indicated the rather abysmal record of this administration on civil rights, and I think you have reviewed in earlier responses to questions of Senator Biden and others the association of Mr. Meese with those decisions. I know you have addressed this in your written statement, but I wonder if there is anything you wish to add.

Mr. **Neas**. Thank you, Senator. Very briefly I would like to follow up on that question.

We did ask that the committee call back Mr. Meese for further questioning on the civil rights issues. You mentioned that we had discussed his personal participation in *Bob Jones*, the Civil Rights Commission, and the Legal Services Corporation. I think there are other areas that he has been involved in.

But that's not the sole reason that I would ask that he be called back. There is a record of 3 years standing now of the Department of Justice and the Reagan administration. This is not the first few months of a new administration, as it was with the confirmation hearings of William French Smith.

I would like the committee to call back Mr. Meese to ask him about the particulars of the Department of Justice record, to state what the law is, what the Supreme Court decisions are, and what the Department of Justice has done over the last 3 years, and ask Mr. Meese as possibly the next Attorney General how he views the law. Whether he agrees with the administration or not.

And I think for us to know whether he's qualified to be Attorney General, we should all have the knowledge and the answers to those questions.

Senator **Kennedy**. Mr. Neas, where is the Justice Department now in the major civil rights litigation? Have there been any instances to your knowledge where they have interceded to at least broaden the scope or the coverage of the protections of the law against discrimination?

Mr. **Neas**. I think the one case that I can recall was the *Norris* case, the pension reform case, that women should get equal pension benefits.

Other than that, Senator, we've had 3 years, in case after case, decision after decision, where the executive branch has tried to weaken the law, repeal the law, or restrict the remedies that have long been available to victims of discrimination.

It's an extraordinarily abysmal record.

Senator **Kennedy**. I would like to ask you, Ms. Simmons, about the appointments of women and minorities in this administration. I think you were here during the hearings last week when I asked about the appointment of women and minorities to the Federal bench.

We found out that there were two appointments, one a new Federal appointment, which was to the district bench, and one was from the district to the circuit.

But really only one out of 124. I'm just wondering—Mr. Meese said it's difficult to find women and minorities with requisite qualifications to be Federal judges.

What is your response?

Ms. **Simmons**. I was so concerned about Mr. Meese's characterization of that that I immediately went to the telephone to refresh my recollection with the National Bar Association. To ascertain as a matter of fact the number of black attorneys who were members of the bar as of 1970, and also to double check to see if there had been any others that had just slipped by me.

And I found out that I was absolutely correct in my thinking that one judge had been elevated and about 3 weeks before Mr. Meese's hearing, another one had been put on the Bench from Maryland.

The record is absolutely abysmal. If you take a look at the prior administration's record, you'll find almost 40. And there are qualified persons in the black community who could meet the ABA standard.

But if I may say so, Senator, the NAACP believes the committee should probe Mr. Meese regarding the whole issue of the judicial appointments, the fact that large numbers of blacks are not considered.

Additionally, the Justice Department has systematically denied the National Bar Association, which is 59 years old, the opportunity to have any input, like the American Bar Association has input, with reference to judicial nominations.

And although the National Bar Association has had three or four meetings with people over in the Justice Department, they have said that it is a special interest group which will have to go by the American Bar Association.

The National Bar Association came into being because blacks could not join the American Bar Association, and it has a long and good history.

So we would like to know whether or not Mr. Meese if he were Attorney General would avail himself of the input from this professional organization that really is not any more of a special interest group than the American Bar Association is.

Senator **Kennedy**. I thank you for that comment.

We were reminded, then, by one of our colleagues that these are judgments that are made by the Senators. I see we have a nominee now, Mr. Wilkinson, from Virginia, who is up before the committee.

And even in this nomination, according to The Washington Post, his bid for the appeals court lacks the strong endorsement of Senator Warner, Virginia's senior Republican, who initially supported older, more judicially experienced candidates for the position.

There are constant other examples. So that decisions are being made. Obviously the Senate has an interest. But when you look at the totality of the record in contrast to previous administrations, it is a disaster.

I think we ought to have the opportunity to find out who is calling the signals over there in the White House. And this is something that we've been very much concerned about.

I thank the chairman.

Senator **Specter**. Senator Metzenbaum.

Senator **Metzenbaum**. Mr. Neas, when Senator Biden was inquiring of Mr. Meese concerning his involvement in some of the decisions that have been such a problem for the civil rights community, and for many Americans besides, Mr. Meese disavowed any involvement, said that he was just one of the players.

In your statement, you say that in connection with the *Bob Jones* and *Goldsboro Christian* case, "because of the political firestorm that erupted, President Reagan, Mr. Meese and others began a series of confusing, and contradictory explanations.

"Eventually they backed off, but not until it became painfully apparent that Mr. Meese and his allies in the administration were more than willing to enforce a law with which they disagreed."

Then you say another example is Mr. Meese's involvement in the Legal Services Corporation; "it has long been clear that Mr. Meese has worked hard to abolish the Legal Services Corporation."

You go on to say that "furthermore once Congress overwelmingly rejected the administration's attempt to kill the Corporation, President Reagan, through Mr. Meese and his staff, proceeded to do everything possible to gut it by executive action."

And you go on and say in addition, "Mr. Meese is responsible for the administration's repeated efforts to circumvent the constitutional responsibilities of the Senate by making recess appointments to the Corporation board, thus allowing the administration's chosen people to run the Corporation without obtaining Senate confirmation."

Then you say, "Finally, there's the death of the independent U.S. Civil Rights Commission" which we've just talked about, "but thanks to the leadership role of Mr. Meese, President Reagan has fired five commissioners who disagreed with his civil rights policies and replaced them with commissioners who reflect his views."

Frankly, Mr. Neas, either you're right and he's wrong or he's right and you're wrong. Because he made the case that he was there but he was not really calling the shots. You were not there, you're not inside the White House, and I wonder if you would care to elaborate upon the statements that you made in your report, or your statement to the committee, indicating how you have arrived at the conclusion that Mr. Meese was, indeed, front and center and the major player on the Reagan administration team in changing these positions, and arriving at some of the conclusions at which they've arrived that have done so much to set back civil rights in this country.

Mr. NEAS. If I may answer that in two parts, Senator. First I think the general theme that I tried to develop in that statement and during the course of questioning today is that regrettably, in many instances, including the three that you've mentioned, the Reagan administration has been a government by executive fiat, not a government of laws, but a government of men and women.

They have acted repeatedly contrary to congressional intent and to decisions of the Supreme Court.

Now, with respect to the three cases I've cited, I guess the best evidence with respect to Meese's role in the *Bob Jones* case is his own interviews with The Washington Post, The New York Times and The LA Times. From these three sources we actually get three explanations in January of 1982 for the *Bob Jones* fiasco.

The first explanation was the President saying that things had fallen between the cracks and it had been a "management" mistake. The second explanation was Ed Meese taking the responsibility—I guess it was January 15 or 16—saying that it was his fault. He had never briefed the President adequately, and he made the decision by himself. The third explanation was 3 or 4 days later. The President held a news conference and stated that he had made the decision back in mid-December. And that, of course was contemporaneous with the disclosure of the Trent Lott memorandum on the *Bob Jones* case, which the President signed off on.

And, of course, that memo precipitated the changes over at the Department of Justice.

Mr. Meese has also said that he found out on December 18 through a memo by Ken Cribbs, one of the White House staff, about the legal issues in *Bob Jones* and what was happening over at the Department of Treasury and the Department of Justice.

This is 3 full weeks before the final decision on January 8. This, by the way, is all in the Senate Finance Committee's hearing, and in the House Ways and Means Committee's hearings. It's public record, statements by Treasury officials and Justice officials, et cetera.

On December 28 Mr. Meese talked with McNamar at Treasury, and McNamar gave him a full briefing, and at that time Mr. Meese said he approved in principle what was to become the administration's *Bob Jones* decision.

And obviously he's also talked about his role in the January 5, 6 and 7 discussions before the decision.

Mr. Meese has been the coordinator of domestic policy for the President. He has been involved in all major policy issues domestically. And on these issues, I think he was a key player. If not the key player, he was well briefed on whatever was happening. And once again, administration officials, led by Mr. Meese, choose to ignore the courts and to ignore the Congress, and just unilaterally decide to grant tax exempt status to those schools and drop the *Bob Jones* case. They requested that the case in the Supreme Court become moot.

On the Civil Rights Commission, of course, I think most Judiciary Committee Senators, or at least 5 or 6 Senators, over many months dealt with Mr. Meese on a weekly basis, personally talking with him. It was certainly no secret in the press from May 25 through the first week of December that Mr. Meese was working on this issue, was controlling it, to the despair of Mr. Deaver, Mr. Baker, and many others in the White House. They, or their aides, talked to the press on many occasions, and stated that Mr. Meese was, as usual, mishandling a key civil rights issue, just like on *Bob Jones*. Thats what was happening with the Civil Rights Commission gratuitously taking on another battle where the President would get hurt, and once again underscoring the insensitivity themes, the unfairness themes.

On the Legal Services Corporation, of course, it's about a 20-year history with respect to Mr. Meese's problems with the Legal Services Corporation, both in California and in Washington, DC.

But it's not so much that he tried to abolish the Legal Services Corporation—we have his letter to the Congress on that—that he was behind that. What we have the most problem with, again, is the fidelity to the law issue, that once the Congress had spoken he would still try to make sure that his type of people, like in the Civil Rights Commission, were in charge and would basically try to dismantle the Legal Services Corporation from within.

Finally, as he tried to do with the Civil Rights Commission Mr. Meese has circumvented the Senate's advise and consent responsibilities and consequently we haven't had one member of the Legal Services Corporation confirmed by the Senate.

I believe the public record shows again that he was the one calling the shots. I think members of the Legal Services Corporation Board have mentioned that in the press on occasion.

Senator **Metzenbaum**. Mr. Innis, I wanted to ask you a question. Mr. Meese has been in office 3 years. The Reagan administration has been in, I guess, a little over 3 years. You talked about this great access and therefore that caused you to believe that it would be worthwhile to confirm him, because it assured access and not only during the balance of this term, but you assumed that the President is going to be reelected.

Mr. Neas, who represents the Leadership Conference on Civil Rights, Ms. Simmons, who represents the NAACP. I think you indicated, Mr. Neas that you had not been able to find Mr. Meese accessible or available, although you've made several attempts to do so. Is that correct?

Mr. **Neas**. At least two Senators of the Senate Judiciary Committee asked Mr. Meese to meet with myself, Althea Simmons, and others during the compromise negotiations on the Civil Rights Commission. He would not do so.

Senator **Metzenbaum**. Am I correct in assuming that those two Members were not of the same political party that I'm in?

Mr. **Neas**. One was a Republican and one was a Democrat.

Senator **Metzenbaum**. Mr. Innis, the last 3-plus years that Mr. Meese has been in office and the President has been in office, how often have you had access to him?

Mr. **Innis**. I have attempted to meet with him one time. And I had very little difficulty. Now, granted——

Senator **Metzenbaum**. When was that?

Mr. **Innis**. That might have been sparked by the fact that he was coming up for confirmation. I think that he has committed to me and he has implied at these microphones to this committee that he will be open and accessible. I think we should put him to the test.

Senator **Metzenbaum**. But in the last 3-plus years you had no access to him until such time as you indicated you would like to meet with him concerning his confirmation, is that correct?

Mr. **Innis**. That is correct. But let me point out that I did not try previously either. And I think that it's typical of people in my arena, the civil rights arena; we do not, in fact attempt to have contact or have dialog with certain kinds of people in this country who were described as anywhere from moderates to conservatives.

And I think that's a mistake. I think we should make a very considered attempt to have this kind of dialog.

Senator **Metzenbaum**. Tell me the circumstances under which you saw fit to contact Mr. Meese on this occasion?

Mr. **Innis**. Strictly because he was the Attorney General-designate, and I had to testify here, I wanted to meet this man personally before preparing a statement.

Senator **Metzenbaum**. How did you set up the appointment?

Mr. **Innis**. Very directly by telephone, and we had very little difficulty in obtaining this appointment. In fact, it was so easy that I felt somewhat silly for not attempting it before.

Senator METZENBAUM. Did you indicate to him in your telephone conversation what you intended your position to be?

Mr. INNIS. No; we stated that we were going to testify, and we wanted to meet with him personally. This was my understanding from my staff; I did not make the call myself.

Senator METZENBAUM. Let me ask all three of you, starting with you, Ms. Simmons, if Mr. Meese is confirmed, what kind of a message, if any, will that be to the members of the NAACP, as well as nonmembers, the American black community, minority community throughout the Nation, impoverished people in this country?

Ms. SIMMONS. The kind of signal that will go out to NAACP and the half million members that we represent, some of whom are in this room today, is that we have no friend in the Department of Justice.

We're quite concerned about the position taken by the Department of Justice now on civil rights laws, because civil rights laws were enacted because the Congress perceived that there was a need for them.

Any narrowing of those laws means that the Department of Justice is not on our side. We feel very strongly that Mr. Meese would not be the people's lawyer, and could not represent the black community impartially and objectively.

We don't think he has the sensitivity to be the people's lawyer, and that's based on statements he's made. For example, in the case of a war resister, according to news accounts, Mr. Meese said that the man who was killed deserved to die. His insensitivity is also revealed by the statement he made about hunger, as reported in the press. Because Mr. Meese has not seen fit to talk with the established civil rights community and many attempts have been made by the black community to talk with people at the White House level who have what we thought was access to power.

Senator METZENBAUM. Thank you. Mr. Neas?

Mr. NEAS. The Department of Justice's record on civil rights, as I've said many times today, has been abysmal. For decades, the Department of Justice was looked upon, as Althea Simmons has said, as the champion of those who had been the victims of discrimination.

Over the last 3 years, the Department has been more and more viewed as the adversary of victims of discrimination.

If Edwin Meese is confirmed as Attorney General, it will reinforce that belief among those who care about equality of opportunity in this country. Edwin Meese has made it clear, through actions as well as by words, that he does disagree with some of the decisions, with some of the laws that have been passed by Congress, and interpreted by the courts. If he gets confirmed, I think we'll have precisely the situation we have now, where the Department of Justice is sending out wrong signals, and is not enforcing the laws of this country.

Senator METZENBAUM. Mr. Neas, in your statement originally—I wasn't here when you made it, I came in a little late—did you indicate those organizations for which you are presently speaking today?

Mr. NEAS. There are 165 organizations in the Leadership Conference on Civil Rights. I believe it was three organizations, and it's in the last paragraph of this statement, that asked not to sign on and concur in this statement.

There are organizations other than those three who never take a position on Federal appointments.

Senator METZENBAUM. Would you have any idea of what the membership, or the numbers of people involved would be that you feel you're speaking for, recognizing that there could be some crossover between NAACP and members of whatever other organizations?

Mr. NEAS. Senator, you're talking about all the major black and Hispanic organizations, all the religious organizations, like the Catholic Conference, the Jewish organizations, and the protestant organizations.

You're talking about the disability community. You're talking about senior citizens You're talking about women's organizations. You're talking about millions and millions of people. I can't give you an exact estimate, but we're speaking for a very considerable number of the American populace.

Senator METZENBAUM. Mr. Innis, in your response, would you indicate what CORE membership is at the moment and what you feel and how you feel, regardless of your own personal feelings, how you feel your members would interpret the appointment and confirmation of Mr. Meese, particularly in view of the positions just taken by Althea Simmons and Mr. Neas.

Mr. INNIS. Senator, I emphasized very strongly in my previous comments that I was giving a different point of view, one that is very sorely needed in this country, in my community.

A previous President once stated that he represented the silent majority. I think that statement was borne out by his election and the rebellion against the established leadership that finally led to the election of Ronald Reagan.

I think we need to recognize that reality in the black community also. I think that I am part of the leadership, that silenced leadership, of the silent black majority. I think that it will behoove Congress and other officials of this country to truly try to tap the feelings and understanding and desires and aspirations of the silent black majority.

My colleagues here represent many organizations. I will say that they represent the civil rights aristocracy. And they have a legitimate point of view, and they should be heard. I think, though, it is impossible for you, it's impossible for the President and others of different points of view, to truly understand the sense of what is desired and what people are saying in the black community unless an attempt is really made to extend and expand that dialog.

It is so important that we do that. One of the problems we have is the inability of other points of view to surface, the inability of those with other points of view to have dialog with you and others in the leadership of this country.

It is in that sense that I made my comment. In terms of my own organization and my membership, I have no doubt because of the kind of independent policies that I have plotted during my administration, that my members will support me and this position.

We have for over a decade been calling for a broader dialog, other than with just those individuals in American who are called liberals or liberal Democrats. We've been calling for dialog with all Americans. We have been calling for a true "rainbow coalition", not a reshuffling of an old relationship, but to expand and find other people in American with whom we have not previously had dialog.

Senator METZENBAUM. I don't think I quite got the answer from you, though, and that is CORE has what size of membership, and my question is not whether your people would stand with you, but whether or not your people would perceive the Meese appointment as a letdown for them and their concerns?

Mr. INNIS. As for the people in CORE, no. As for the other people that I think I speak for which is that silent black majority, yes.

Based on the perception that is given to the black community by the media, based on the perception they have gotten from loose statements, uninformed statements by Ed Meese and other people in the administration, based on Clarence Pendleton of the Civil Rights Commission attacks on the Supreme Court's decision yes, there is no doubt that the impression and the message, and the signal that will be given to the average black person, even of this silent black majority I talk about, will be that of a letdown.

But I think that's the challenge. We should face that challenge. We should demand that Meese face that challenge also. And he should give a very clear statement to the public, similar to the statements he has given here at this committee hearing, that he will in fact uphold the laws of the land; that he will follow the decisions of the Supreme Court of the United States and the intent of Congress.

Senator METZENBAUM. Thank you, Mr. Chairman. Thank you Mr. Innis, Mr. Neas, and Ms. Simmons.

Senator SPECTER. Thank you very much, Mr. Neas, thank you Ms. Simmons, and thank you, Mr. Innis. We very much appreciate your being here and providing your helpful testimony to the committee.

At this point we will take a short recess, hopefully not more than 10 minutes or so.

[Whereupon, a short recess was taken.]

The CHAIRMAN. The committee will come to order.

At this time we will call as the next panel of witnesses Helen Gonzales, Mexican American Legal Defense Fund; Virginia Apuzzo of the National Gay Task Force; Martha Escutia of the National Council of La Raza; and Arnoldo Torres of the League of United Latin American Citizens; and Mr. Blaylock of AFSCME.

Mr. LEVI. Mr. Chairman, I am Jeffrey Levi. Ms. Apuzzo is not able to appear here, and I will present the testimony on behalf of the National Gay Task Force.

The CHAIRMAN. All right, sir.

Mr. TREVINO. Mr. Chairman, I am Joseph Trevino. I will be appearing instead of Mr. Torres for LULAC.

The CHAIRMAN. All right.

Is Kenneth Blaylock here today? Has anyone see him?

[No response.]

The CHAIRMAN. Robert F. Drinan?

[No response.]

The CHAIRMAN. All right.

Mr. **Gnaizda**. Mr. Chairman, my name is Bob Gnaizda of Public Advocates. We were originally on the fifth panel, but on Friday it was agreed we could be on the third panel for our convenience.

The **Chairman**. You can't be here when we take the fifth panel, so we'll take you now. Have a seat.

Would all the witnesses rise so you can be sworn?

[The witnesses were sworn.]

The **Chairman**. We'll hear from Ms. Gonzales first, please. Each of the witnesses will have 5 minutes. If you don't finish in 5 minutes, we will have your complete statement in the record. I think in 5 minutes you can summarize the main thrust of your testimony.

But your entire testimony will go in the record regardless.

STATEMENT OF A PANEL CONSISTING OF HELEN C. GONZALES, ASSOCIATE COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND; JEFFREY LEVI, NATIONAL GAY TASK FORCE; MARTHA ESCUTIA, LEGISLATIVE DIRECTOR, NATIONAL COUNCIL OF LA RAZA; ROBERT L. GNAIZDA, PUBLIC ADVOCATES, INC.; AND, JOSEPH TREVINO, LEAGUE OF UNITED LATIN AMERICAN CITIZENS [LULAC]

Ms. **Gonzales**. My name is Helen Gonzales, and I'm the associate counsel for the Mexican American Legal Defense and Educational Fund. On behalf of MALDEF, I wish to express our strong opposition to the nomination of Edwin Meese as Attorney General of the United States. While we have many concerns regarding Mr. Meese's nomination, two are most compelling. First, Mr. Meese has a long, established record of promoting the selective enforcement or nonenforcement of this Nation's civil rights laws; second, Mr. Meese has demonstrated a willingness to use improper and even unethical means to achieve his aims. This conduct, in our view, does not comport with the high office of Attorney General.

Our views, Mr. Chairman, are based not only on his role in the Reagan White House, but also on his role in then-Governor Reagan's California administration.

Rather than vigorously seek to have all civil rights laws enforced, Mr. Meese and the Reagan administration have ignored or circumvented these laws and policies with which they disagree. In my written statement, I present two well-documented cases where this was done by administrative fiat and indirect contradiction to well established judicial precedent or congressional intent.

Both of these cases have been discussed thoroughly by other witnesses, so I will just refer to them. One was the *Bob Jones University* case and the other is the Legal Services Corporation situation.

Both, Mr Chairman, are examples which illustrate Mr. Meese's willingness to ignore the law and the Congress in order to achieve a political goal.

This leads us to believe that as Attorney General, Mr. Meese will, at a minimum, fail to enforce civil rights laws with which he disagrees.

What is even more disconcerting is that Mr. Meese seeks to head an agency which itself has demonstrated an unwillingness to vigorously enforce many civil rights laws.

Thus, confirming Mr. Meese as Attorney General will give him and the Justice Department ample license to continue and expand their flagrant conduct.

Our second concern is that this administration, and Mr. Meese specifically, has demonstrated an abhorrence to any criticism or opposition to its policies. Rather than addressing the merits of the critics' arguments, this administration has tried to silence or discredit the critics themselves, even attempting to eliminate forums which foster this criticism.

The most recent and blatant exercise in silencing its strong critics was the destruction of an independent Civil Rights Commission. Again, this has been discussed rather thoroughly by the previous panel, so I will just refer you to my testimony in this regard.

The second example occurred during Mr. Reagan's tenure as Governor, and involved the California Rural Legal Assistance which litigated against many of his administration's efforts to limit services to the poor

For Hispanics in California, in fact, CRLA provided the first and only effective efforts to seek redress through the judicial system. Frustrated by the inability to stem CRLA's successes in the courts, Mr. Meese and the Reagan administration instead attempted to discredit the professional reputations of CRLA lawyers.

As Mr. Bob Gnaizda will demonstrate in his testimony, Mr. Meese filed publicly 127 charges of unethical conduct against 44 CRLA attorneys. These charges were serious enough that if valid they could have subjected the attorneys to disciplinary action, including possible suspension or disbarment.

As my written statement, and again Mr. Gnaizda will show, the evidence is clear that Mr. Meese had knowledge when he filed these charges that they were false. Such behavior is clearly unethical and a violation of the ABA rules of professional conduct which prohibit an attorney from making false statements to a third person.

Mr. Meese's attack was especially disturbing to our community because, as I indicated, for Hispanics CRLA was our first effort to really successfully attack many of the administration's policies in court.

Finally, an authoritative study of the California judiciary reported last year that on at least one occasion Mr. Reagan, Mr. Meese, and another aide met with the former Chief Justice of the California Supreme Court in an attempt to influence him on a case pending before the court. Such attempts to influence a judge on a matter pending before him are clearly unethical.

This incident, like the CRLA and the Civil Rights Commission episodes show the lengths to which Mr. Meese and Mr. Reagan are willing to go in order to uphold their positions against an opponent. In each case this administration did not hesitate to take extreme, even unethical, actions to secure their goals.

Mr. Chairman, I have attempted to demonstrate in my written statement that Mr. Meese's past conduct shows that he is unsuitable for the position of Attorney General. MALDEF is very concerned, in closing, that——

The **Chairman**. Your time is up. Are you about through?

Ms. **Gonzales**. Mr. Chairman, I have one last sentence.

The **Chairman**. If you have only one more sentence, go ahead, Ms. Gonzales.

Ms. **Gonzales**. Thank you.

We're very concerned because Mr. Meese's propensity to abuse authority has until now been limited somewhat by the fact that his positions have been in advisory capacities. But, if confirmed as Attorney General he will have at his disposal the full range of powers available to the Nation's chief law enforcement officer.

It is for this reason that we are compelled to vigorously oppose the nomination of Edwin Meese for Attorney General.

[The statement of Ms. Gonzales follows:]

TESTIMONY OF HELEN C. GONZALES, ASSOCIATE COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

MR. CHAIRMAN, my name is Helen C. Gonzales and I am the Associate Counsel for the Mexican American Legal Defense and Educational Fund. MALDEF is a national civil rights organization dedicated to preserving the civil and constitutional rights of persons of Mexican and Hispanic descent. We currently have offices in San Francisco, Los Angeles, Denver, San Antonio, Chicago and here in Washington, D.C.

On behalf of MALDEF, I wish to express our strong opposition to the nomination of Edwin Meese III as Attorney General of the United States. While we have many concerns regarding Mr. Meese's nomination, two are most compelling. First, Mr. Meese has a long established record of promoting the selective enforcement, or non-enforcement, of this nation's civil rights laws. Second, Mr. Meese has demonstrated a willingness to use improper and even unethical means to achieve his aims. This conduct, in our view, does not comport with the high office of Attorney General.

Our views are based not only on Mr. Meese's role in the Reagan White House, but also on his role in then Governor Reagan's California Administration. As Chief of Staff to Governor Reagan, Mr. Meese was the key player in the Governor's decision-making process. No significant matter escaped his careful scrutiny before reaching Reagan.[1] As White House Counselor, Mr. Meese continues to be central to the Reagan decision-making process. He has been instrumental in shaping Administration policy on many issues.[2]

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[1] California Journal, June 1970.

[2] See Reagan's New Lawman, Newsweek, February 6, 1984; Meese Expected to Take Activist Approach, Washington Post, January 23, 1984, at A1.

SELECTIVE ENFORCEMENT

The Attorney General, more than any other executive officer, other than the President, must be dedicated to the faithful execution of the laws and defense of the Constitution.[3] The Attorney General must not selectively enforce the laws or the Constitution, especially not to advance the policy interests of the Administration. Mr. Meese, however, has consistently counseled this administration to reverse long-standing civil rights policies to achieve political ends. In two well documented cases, this has been done by adminstrative fiat in direct contradiction to well established judicial precedent or congressional intent.

A. Bob Jones University Case

The Bob Jones University case presents a good example of this administration's willingness to administratively reverse established policies, with which they disagree, rather than ask the courts or the Congress to overturn those policies.

Mr. Meese was instrumental in obtaining tax-exempt status for Bob Jones University, a school found to have racially discriminatory policies.[4] This status was granted despite well settled law making such exemptions illegal. In 1971, the Supreme Court affirmed a district court ruling that issuing tax-exempt status to racially discriminatory private schools was illegal.[5]

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[3] *See* U.S. Const., Art. II, §3.

[4] *See Bob Jones University v. United States*, 639 F.2d 147 (4th Cir. 1980), *aff'd*, ___ U.S. ___, 103 S.Ct. 2017, 76 L.Ed. 157 (1983).

[5] *Green v. Connolly*, 330 F.Supp. 1150 (D.C. D.C. 1971), Aff'd 404 U.S. 997 (1971) (*Per Curiam*).

Following the Supreme Court's affirmance of Green, the IRS formalized the non-discriminatory policy in a number of revenue rulings.[6] The Fourth Circuit, subsequently, upheld the IRS regulations in Bob Jones University v. United States.[7]

In spite of the clear precedent establishing such tax exemptions as illegal, the Reagan Administration unilaterally retracted the IRS regulation denying tax-exempt status to schools like Bob Jones University.[8] Mr. Meese has been identified as the major proponent of this rescission.[9] The Administration's efforts to circumvent the law was ultimately thwarted when the Supreme Court reaffirmed its prior opinions, which held that granting tax-exempt status to racially discriminatory schools is unconstitutional.[10]

B. Legal Services Corporation

Mr. Meese has also played an active role in Reagan's attempts to abolish the Legal Services Corporation. In March of 1981, President Reagan asked Congress not to appropriate any funds to the Legal Services Corporation.[11] In May of 1981, Meese publicly promoted the abolishment of the Legal Services Corporation.[12] In addition, Mr. Meese lobbied Republican Congressmen stating that "the Administration does not want a Legal Services bill to be reauthorized."[13] In spite of these appeals, Congress reauthorized and refunded the Legal Services Corporation.[14]

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[6] See, e.g., Rev. Rul. 75-231, 1975-1, Cum. Bull. 158.

[7] Supra, 639 F.2d at 151.

[8] Washington Post, August 27, 1982.

[9] See New York Times, January 23, 1984; Newsweek, February 6, 1984; Washington Post, January 23, 1984; Houston Chronicle, January 30, 1984; Los Angeles Times, January 24, 1984.

[10] Bob Jones University, supra, n.4.

[11] See National Journal, March 12, 1983; Congressional Quarterly, May 14, 1983.

Faced with this clear congressional intent to continue the Corporation, Reagan and Meese had but one option left. The Administration tried to pack the Corporation during a Congressional recess with individuals who shared its views on abolishing legal services for the poor.[15] They then tried to get Senate confirmation of these appointments. However, when faced with the likelihood that the nominees would not get confirmed, Reagan withdrew their names.[16]

Mr. Meese's role in this process was confirmed by one of the nominees, who commented that, "Edwin Meese, not Mr. Reagan, is calling the shots on Legal Services in the White House."[17]

These examples illustrate Mr. Meese's capacity to ignore the law in order to achieve a political goal. This conduct leads us to believe that, as Attorney General Mr. Meese will, at a minimum, fail to vigorously enforce those civil rights laws with which he disagrees.

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[12] Commencement Address, University of Delaware Law School, May 16, 1983, Edwin Meese, p. 25.

[13] House Debates Legal Aid; Reagan Veto Threatened, Washington Post, June 17, 1981.

[14] Legal Services Reprieve Voted, Washington Post, June 18, 1981.

[15] National Journal, *supra*, n.11.

[16] Reagan Withdraws Nine Nominees to Legal Unit, New York Times, December 9, 1982.

[17] Id.

What is even more disconcerting is that Mr. Meese seeks to head an agency which itself has demonstrated an unwillingness to vigorously enforce many civil rights laws.[18] Thus, confirming Mr. Meese as Attorney General will give him and the Justice Department ample licence to continue -- and expand -- their flagrant conduct.

SILENCING THE CRITICS

This Administration has demonstrated an abhorance to any criticism or opposition to its policies. Rather than responding to the opposition by dealing only with the merits of their arguments, this Administration has tried to silence or discredit the critics themselves. The Administration has even attempted to eliminate those forums which foster such criticism.

A. Civil Rights Commission

The Administration's most recent and blatant exercise in silencing a strong critic was its successful campaign to destroy the independence of the U.S. Commission on Civil Rights. Meese's role in this campaign is clear.[19]

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[18] This Administration has reversed prior Justice Department positions on crucial legal issues in at least 19 lawsuits, American Civil Liberties Union, *In Contempt of Congress and the Courts, the Reagan Civil Rights Record*, iv (1984). *See*, *e.g.*, William Bradford Reynolds, testimony before the House Subcommittee on Civil and Constitutional Rights, November 19, 1981, at 53-54 (stating that the Justice Department will only require voluntary integration plans, not mandatory busing, in school districts with *de jure* dual systems. This is in direct contradication to the Supreme Court's mandate in *Brown v. Board of Education*, 347 U.S. 387 (1954), and *Green v. County School Board*, 391 U.S. 430 (1968). Reynolds also stated that he will seek reversal of *United Steelworkers of America v. Weber*, 443 U.S. 193 (1979), where the Supreme Court upheld employer affirmative action plans.

The Civil Rights Commission has traditionally served as the only independent body in the federal government charged with the task of reviewing administrative enforcement of our civil rights policies. The Commission has no enforcement authority, but its independence from the legislative and executive branches, together with its critical analysis of the issues, made it an important voice in analyzing the problems affecting the civil rights of many Americans.

The Civil Rights Commission has been a vocal critic of all administrations. Last year, the Commission voiced concern over the fact that Reagan had appointed few women and minorities to policy-making positions within his Administration.[20] The Commission was also critical of many of his civil rights enforcement policies.[21] Because of these and other criticisms, the Administration decided to reshape the Commission to reflect its own philosophy.

In early 1983, the Administration nominated three persons to replace the most vocal Reagan critics in the Commission. The views of the nominees were more in line with those of the Administration.[22] However, the effort to gain Senate confirmation of these nominations encountered difficulties. The nominees were opposed primarily because their confirmation would have allowed the Administration to fire a total of five of the six Commissioners.[23] No other Administration had fired even one Commissioner. Thus, this action would have destroyed the independence the Commission required to retain its effectiveness.

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[19] See 129 Congressional Record S15907 (Daily Ed. November 10, 1983) (Statement of Senator Thurmond thanking those involved in reauthorizing the Commission including "Mr. Ed. Meese, who has worked on this for the President...") See also Williams, Aides Concede White House Fumbled Civil Rights Panel Episode, Washington Post, November 26, 1983. See also Civil Rights Panel: Victory for Reagan, 4 Human Events, December 17, 1983.

[20] Civil Rights Panel Criticizes Reagan on Appointments, New York Times, June 13, 1983.

[21] Rights Unit Faults Reagan Once More -- On Civil Rights Enforcement of Education, New York Times, June 14, 1983.

In an effort to avoid this result, negotiations were intitiated to reach a compromise with the Administration. When these negotiations were stalled, the Senate drafted its own proposal to reauthorize an independent Commission. Despite the fact that the proposal was rejected by the President, the Senate decided to proceed with it. As the proposal was about to be voted on, Reagan took the drastic step of firing the three Commissioners he had been seeking to replace through the confirmation process.[24] This was a blatant move to unilaterally take control of the Commission, and was ultimately declared illegal by the Federal Courts.[25]

B. California Rural Legal Assistance (CRLA)

During the years when Reagan was Governor of California, CRLA litigated against many of the Administration's efforts to limit services to the poor. The CRLA was successful in enlarging the food stamp and school lunch programs, preserving threatened welfare and medical benefits, and enhancing the rights and working conditions of farm workers.

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[22] *See*, *e.g.*, *Balance on Civil Rights*, Los Angeles Times, September 22, 1983; Williams, *New Nominees Oppose Quotas*, Washington Post, May 26, 1983.

[23] In 1982, the President had fired two other Commissioners.

[24] *See* 129 Congressional Record S15753 and S15756 (Daily Ed. November 9, 1983) (Statement of Senators Biden and Specter).

[25] *See*, *Berry v. Reagan*, Civil Action No. 83-3182 (D.C.D.C.,1983); *Vacated Berry v. Reagan*, Civil Action No. 83-2184 (D.C.Cir. 1983) (The Court of appeal vacated the judgement as moot after the old Commission expired).

The Administration, frustrated by their inability to stem the CRLA successes in the courts, attempted to discredit the professional reputations of CRLA lawyers. Mr. Meese, as Reagan's Chief of Staff, was heavily involved in orchestrating this smear campaign against the CRLA.[26] In December of 1980, Mr. Meese publicly filed 127 charges of unethical conduct against 44 CRLA attorneys with the Federal Office of Economic Opportunity. The charges were serious enough that, if valid, they could have subjected the attorneys to disciplinary action, including possible suspension or disbarment.

What is most troubling about the affair is that Mr. Meese had to know that the charges he was filing were unfounded. Prior to the Reagan campaign against CRLA, an independent commission, headed by retired California Supreme Court Justice Tom Clark, conducted an investigation of CRLA. They found CRLA to be an exemplary program. In addition, the Deputy Attorney General of California, William Bradford, informed Meese that his charges were false.[27]

However, because Mr. Meese contined to publicly press his charges against CRLA, then President Nixon appointed an independent commission, consisting of three Republicans, to investigate the charges. After extensive investigation, the Commission unanimously found the charges to be baseless. The Commission stated "[the] charges of wrongdoing on the part of CRLA set forth in the [Administration's report] are unfounded and without merit."[28] In contrast to the Reagan Administration's charges, the Commission found CRLA to be operating in a "highly competent, efficient, and exemplary manner."[29]

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[26] Sacramento Bee, May 14, 1971, A4.

[27] Letter by Bradford to Frank Carlucci, the head of Federal OEO, as reported in the Merced Sun Star, January 25, 1971.

Mr. Meese and the Reagan Administration refused to appear before the Commission to substantiate their charges. Instead, the Administration publicly demanded that the Commission resign or be disbanded.[30]

Thus, it is clear that Mr. Meese willingly filed charges which he knew were false and in direct contradiction to Judicial Commission findings. Such behavior is clearly unethical and a violation of Rules of Professional Conduct which prohibit an attorney from making false statements to a third person.[31]

C. Improper Attempts to Influence the Courts

Finally, as Chief of Staff to then California Governor Reagan, Meese reportedly attempted to directly and improperly influence the decision of then California Supreme Court Chief Justice Donald Wright.[32] Governor Reagan had appointed Chief Justice Wright because he believed Wright would reflect Reagan's own conservative views on the bench[33]. When, however, the Chief Justice did not meet this expectation the Governor sent officials from his office to visit Wright to discuss the Governor's views on cases pending before the Court.[34] An authoritiative study of the California judiciary reported that on at least one occasion, Reagan, Meese, and another aide met with the Chief Justice in an attempt to influence him on a case pending before him.[35] Such attempts to influence a Judge on a matter pending before him are clearly unethical.[36]

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[28] Nixon Judicial Commission Report, 82 (1971).

[29] Id., 88.

[30] The fact that the Administration would call for the resignation of the Commissioners, whom he appointed, simply because the result they reached differed from the one the Administration desired illustrates the vindictive nature of this adminstration. See also 24 Hastings Law Journal 599 [Presenting an excellent chronology of the events that transpired during the Reagan Administration's campaign against the CRLA].

[31] See ABA Code of Professional Responsibility, Rule 4.1.

This incident, like the CRLA and Civil Rights Commission episodes, show the lengths to which Meese and Reagan are willing to go in order to uphold their positions against an opponent. In each case, this Administration did not hesitate to take extreme -- even unethical -- actions to secure their goals.

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[32] B. Medsger, Framed, The New Right's Attack on Chief Justice Rose Bird and the Courts 19-20 (1983).

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *See, e.g.*, D.R. 7-108 (B) Cal. Rules of Professional Conduct, Deering, Rules Annotated (1975), which prohibit an attorney from communicating with a Judge on the merits of a case, except under specific conditions not applicable in Meese's case.

CONCLUSION

Mr. Chairman, I have attempted to demonstrate that Mr. Meese's past conduct shows that he is unsuitable for the position of Attorney General. Mr. Meese's record shows that he has acted to assure the non-enforcement of civil rights laws which he and the Reagan Administration could not support. In addition, Mr. Meese has helped fashion Administration policies that were clearly contrary to well established legal precedents or congressional mandates. Nevertheless, Mr. Meese pursued these policies, showing a willingness to secure his goals by any means at his disposal, even if such methods were inappropriate or unethical. Mr. Meese has dealt with opponents and critics in much the same manner.

MALDEF is very concerned about Mr. Meese's propensity to abuse authority. This propensity has until now been limited, somewhat, by the fact that Mr. Meese's positions have been in an advisory capacity to the President and his administration. While Mr. Meese has certainly been one of the more influencial forces in the development of the Administration's policies, he has not had his own independent source of power or authority.

If Mr. Meese is confirmed as Attorney General, he will have at his disposal the full range of powers available to the nation's chief law enforcement officer. Our concern is that abuse of these vast powers could pose a more serious threat to anyone who challenges the Administration and its policies.

It is for these reasons, Mr. Chairman, that MALDEF is compelled to vigorously oppose the nomination of Edwin Meese III for Attorney General.

The CHAIRMAN. Thank you, Ms. Gonzales.

The Senator from Massachusetts.

Senator KENNEDY. Thank you, Mr. Chairman.

One of the areas that I've been most interested in is Mr. Meese's general insensitivity to many of those who have been left out of this society, and have been discriminated against on the basis of race or sex. Mr. Meese is reluctant to support the concept of equal pay for comparable worth. He is opposed to the Legal Services Corporation. He's indicated that he favors providing legal services for the poor in a different way. I have listened to his explanation of how he would do it. I find it difficult to see how that could be an effective program.

But in your testimony you mention that at the time or near the time when California Rural Legal Assistance was being attacked that California Supreme Court Justice Tom Clark conducted an independent investigation of CRLA and found it to be an exemplary program.

I also understand that at the same time, the deputy attorney general of California found that the charges against CRIA were false. What was the reaction of Mr. Meese to the report by Justice Clark, and the finding of the deputy attorney general of California that these charges were false? Did he drop the assault on California Rural Legal Assistance?

Ms. GONZALES. No, Senator; and as Mr. Gnaizda can further testify later, it's our understanding that to date he has never publicly retracted those charges and never apologized for those charges. I think that is what is of concern to us.

This conduct has occurred, and given what has also happened here in Washington, what we're looking at—and I realize a concern of other Senators is that we're opposing Mr. Meese because we don't like some of his civil rights policies. I think, however, the record that we developed, and that others developed, in testimony dmonstrates that it is this undue use of his influence that really is of concern to us.

Either he has done as he did with the CRLA where he filed charges which he knew not to be true, or he has gone around either the legal or the congressional process. And that is what is of concern to us.

Senator KENNEDY. In ways that have compromised your——

Ms. GONZALES. In ways that we feel have compromised the interests of Hispanics and minorities generally. Basically the individuals and organizations that he has gone against are those that our community depends on.

Senator KENNEDY. Primarily in this case, the Legal Service Program?

Ms. GONZALES. Yes; CRLA, as I indicated, provided the first and only effective redress for us against the Reagan administration.

Senator KENNEDY. Were you ever impressed by his alternative ways of providing legal services? Did he ever meet with Hispanic groups out there and say, look, I think we can do it in a different way and do it better to make sure your interests are really going to be carried forward or protected?

Ms. GONZALES. No, Senator; I am also from California, and I was in California at that time, and although I don't have the firsthand knowledge that Mr. Gnaizda has, I know that our concern again is not that Mr. Meese tried to meet with the Hispanic community and others to try to convince them or the legislature that we ought to do things differently, but that he unilaterally took it upon himself to come back here to Washington to try to destroy CRLA.

And when those efforts failed in the legislative process he then undertook this smear campaign against these attorneys. And that's really what is of concern—not that there is a dialog going on to try to convince people that there is a better way of doing things, but that, in fact, there is unilateral action being taken in this regard.

Senator KENNEDY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Our next speaker is Mr. Levi.

Mr. LEVI. Thank you, Mr. Chairman.

My name is Jeffrey Levi. I am the Washington representative of the National Gay Task Force.

Mr. Chairman, we are proud to join our colleagues from the Leadership Conference on Civil Rights in opposing the nomination of Edwin Meese to head the Justice Department.

The Attorney General of the United States should have a deep, personal commitment to justice and fairness, to the civil liberties and civil rights of all Americans, and to bringing within the protection of our legal system those groups and individuals who have traditionally been consigned to the margins of society.

When he makes light of hunger in the United States or tramples on the interests of minority groups in his support of packing the U.S. Civil Rights Commission, Mr. Meese fails the simple test of compassion.

Mr. Chairman, the National Gay Task Force represents 23 million gay and lesbian Americans who still have not been accorded their full civil rights as U.S. citizens. Within the Federal Government and throughout these United States, lesbians and gay men continually face discrimination in the workplace, in housing, in their relationship to the criminal justice system, and in the conduct of their everyday lives.

That is why the role of the Department of Justice is so important to us. And that is why we come here today with some serious concerns about a Justice Department under the leadership of Edwin Meese.

Let me outline several areas of particular concern to my community. There has been a long and continuing effort to make gay and lesbian civil rights a part of the general civil rights agenda in America. We have made tremendous progress toward that goal. We have gained the support of many of your colleagues, including Senator Kennedy, for extending the protection of the 1964 Civil Rights Act to include sexual orientation.

More than 50 cities and counties, and 7 States have granted some kind of protection. Most recently the U.S. Conference of Mayors Committee on Human Development unanimously endorsed Federal, State, and local remedies for antigay and lesbian bias.

Those of us who have long been active in the civil rights community, fighting for the rights of all minorities, firmly believe that all individuals and institutions should obey civil rights laws without exception.

Mr. Meese and this administration do not seem to agree. They seem willing to bargain away the rights of minorities, as they did in the *Bob Jones* case.

Fortunately, the administration's position that a religious institution could discriminate on the basis of race was overturned by the Supreme Court. This is of more than passing concern to my community, because at this very moment the very same arguments used by the Reagan administration are being used by Georgetown University in Washington, DC and the Salvation Army in New York City to seek exemption from local requirements that they not discriminate against gay men and lesbians if they wish to receive public funds.

If the civil rights laws enacted after so much struggle and debate are to have any meaning, we cannot allow them to be undermined by granting wholesale exceptions along the way.

All too often, bigotry is expressed violently. Most minority groups in this country have experienced this kind of hatred, and gay and lesbian Americans are no exception. During the first 8 months of 1983, the National Gay Task Force's crisisline received over 1,700 reports from around the country of antigay or lesbian attacks ranging from verbal abuse to homicide, all motivated by hatred of homosexuals.

An NGTF survey of eight major cities showed that one-fourth of gay men and more than one-tenth of lesbians have been the victims of violent attack simply because they are gay or lesbian. For most other minorities, this type of violence is considered a civil rights violation and the Justice Department can press Federal charges. Yet the gay and lesbian community cannot even get the Justice Department to collect data on this problem, let alone consider remedies.

Another concern of the gay-lesbian community regarding the Justice Department is the decades of surveillance and infiltration by the FBI of gay and lesbian political and social organizations. There is evidence showing that the legitimate political organizing of our community was the subject of intensive and consistent surveillance between 1950 and 1980. And there is no guarantee that it has stopped today.

This is a concern about the Department that reaches beyond our community, and one that is made more compelling given Mr. Meese's record as district attorney in Alameda County, where he accused antiwar protesters of giving aid and comfort to the enemy, and authorized undercover agents to infiltrate the Berkeley Vietnam Day Committee.

This attitude toward those who were exercising their constitutional rights does not give reassurance to those of us who continue to exercise ours.

Mr. Meese would also have jurisdiction over immigration. Under public health provisions of current law, gay men and lesbians can be excluded from entry into the United States. These reflect an attitude toward homosexuality rejected long ago by the medical establishment that is expected to enforce them. Yet the Justice Department has continued to defend this outmoded and discriminatory policy in the courts, notably in the *Carl Hill* case currently on appeal to the Supreme Court.

The Department's energies and American taxpayers' dollars would be better spent in working with Congress to produce immigration reform that is fair to all, gays and lesbians, Hispanics, political and cultural figures, and others who have been treated unjustly by the existing immigration system.

Mr. **Short**. Could you conclude your statement, please?

Mr. **Levi**. Sure. Mr. Chairman, I have outlined issues of considerable importance to gay and lesbian Americans concerning the Justice Department and how responsive it will be in defending their rights under the Constitution.

I urge you to call Mr. Meese back before this committee so that the record will state clearly from the start what his positions on these matters are so the Senate can know how deep a commitment to equal justice under the law Edwin Meese actually has before voting to confirm him as Attorney General.

Thank you very much.

[The statement of Mr. Levi follows:]

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TESTIMONY ON THE NOMINATION OF EDWIN MEESE AS ATTORNEY GENERAL

Virginia M. Apuzzo
Executive Director

Mr. Chairperson, the National Gay Task Force joins its colleagues from the Leadership Conference on Civil Rights in opposing the nomination of Edwin Meese to head the Justice Department. The Attorney General of the United States should have a deep personal commitment to justice and fairness, to the civil liberties and civil rights of all Americans, and to bringing within the protection of our legal system those groups and individuals who have traditionally been consigned to the margins of society. When he makes light of hunger in the United States or tramples on the interests of minority groups in his support of packing the U.S. Civil Rights Commission--an issue that has already brought us before this committee--Mr. Meese fails the simple test of compassion.

Mr. Chairperson, my organization represents 23 million gay and lesbian Americans who still have not been accorded their full civil rights as U.S. citizens. Within the federal government and throughout these United States, lesbians and gay men continually face discrimination in the workplace, in housing, in their relationship to the criminal justice system, and in the conduct of their everyday lives. That is why the role of the Department of Justice is so important to us, and that is why we come here today with some serious concerns about a Justice Department under the leadership of Edwin Meese. Let me outline several areas of particular to concern to my community.

There has been a long and continuing effort to make gay and lesbian civil rights a part of the general civil rights agenda in America. We have made tremendous progress toward that goal. We have gained the support of many of your colleagues in the Congress to extend the protections of the 1964 Civil

Rights Act to include sexual orientation. More than 50 cities and counties, and seven states, have granted some kind of protection. Most recently, the U.S. Conference of Mayors' Committee on Human Development unanimously endorsed federal, state, and local remedies for anti-gay and lesbian bias.

Those of us who have long been active in the civil rights community—fighting for the rights of all minorities—firmly believe that all individuals and institutions should obey civil rights laws without exception. Mr. Meese does not seem to agree. He seems willing to bargain away the rights of minorities, as he did in the Bob Jones case. Fortunately, the Administration's position that a religious institution could discriminate on the basis of race was overturned by the Supreme Court. This is of more than passing concern to my community, because at this very moment the very same arguments used by the Reagan Administration are being used by Georgetown University in Washington, D.C. and the Salvation Army in New York City to seek exemption from local requirements that they not discriminate against gay men and lesbians if they wish to receive public funds. If the civil rights laws enacted after so much struggle and debate are to have any meaning, we cannot allow them to be undermined by granting wholesale exceptions along the way.

All too often, bigotry is expressed violently. Most minority groups in this country have experienced this kind of hatred—and gay and lesbian Americans are no exception. During the first eight months of 1983, the National Gay Task Force's Crisisline received over 1700 reports from around the country of anti-gay or lesbian attacks ranging from verbal abuse to homicide—all motivated by hatred of homosexuals. An NGTF survey of eight major cities showed that one-fourth of gay men and more than one-tenth of lesbians have been the victims of violent attack simply because they are gay or lesbian. For most other minorities, this type of violence is considered a civil rights violation and the Justice Department can press federal charges. Yet the gay and lesbian community cannot even get the Justice Department to collect data on this problem, let alone consider remedies.

The recent failure of the Justice Department to pursue federal charges against Dan White, who murdered San Francisco Mayor George Moscone and Supervisor Harvey Milk, offers us little hope that these attitudes are changing. Many in my community feel that because Milk was gay and Moscone was sympathetic to lesbian and gay civil rights, White's act of political assassination was motivated at least in part by his avowed homophobia; and because of this, the Justice Department was less inclined to prosecute.

Another concern of the gay/lesbian community regarding the Justice Department is the decades of surveillance and infiltration by the FBI of gay and lesbian political and social organizations. There is evidence showing that the legitimate political organizing of our community was the subject of intensive and consistent surveillance between 1950 and 1980—and there is no guarantee that it has stopped today. This is a concern about the Department that reaches beyond our community, and one that is made more compelling given Mr. Meese's record as district attorney in Alameda County—where he accused antiwar protestors of giving aid and comfort to the enemy, and authorized undercover agents to infiltrate the Berkeley Vietnam Day Committee. This attitude toward those who were exercising their constitutional rights does not give reassurance to those of us who continue to exercise ours.

Researchers in our community have been attempting to uncover past abuses by the FBI and others in this surveillance of the gay/lesbian community. Historian Dan Siminoski has had to take the Justice Department to court in his effort to gain access to these documents under the Freedom of Information Act. The FOIA is already more restrictive than it should be. Yet Mr. Meese, while working at the White House, has advocated further limitations on the right of citizens to know what their government has been doing.

Mr. Meese would also have jurisdiction over immigration. Under public health provisions of current law, gay men and lesbians can be excluded from entry into the United States. These reflect an attitude toward homosexuality rejected long ago by the medical establishment that is expected to enforce them. The Justice Department has continued to defend this outmoded and discriminatory policy in the courts, notably in the Carl Hill case currently on appeal to the Supreme Court. The Department's energies and American taxpayers' dollars would be better spent in working with Congress to produce immigration reform that is fair to all—gays and lesbians, Hispanics, political and cultural figures, and others who have been treated unjustly by the existing immigration system.

Finally, the Justice Department has been charged by President Reagan with the task of reassessing the security clearance system that has been in effect since 1953. Executive Order 10450, the basis for the current regulations, in effect defines lesbians and gay men as threats to the national security. In this particular area, no other minority group is singled out in this fashion. While many agencies now give security clearances to gay men and lesbians, the CIA, the FBI, the NSA, the Foreign Service, and many of their contractors continue to maintain that gays and lesbians are security risks susceptible to blackmail because they are gay or lesbian. This is a red herring that has yet to be proven after more than 30 years. It is a policy that is now under challenge in the courts. It is our hope that the Department's review will establish standards for gay men and lesbians that are no stronger or weaker than those set for their heterosexual counterparts.

Mr. Chairperson, I have outlined issues of considerable importance to gay and lesbian Americans concerning the Justice Department and how responsive it will be in defending their rights under the Constitution. I urge you to call Mr. Meese back before this committee so the record will state clearly from the start what his positions on these matters are—so the Senate can know how deep a commitment to equal justice under the law Edwin Meese actually has before voting to confirm him as Attorney General.

Thank you very much.

The CHAIRMAN. The distinguished Senator from Massachusetts.

Senator KENNEDY. Thank you, Mr. Chairman.

Mr. Levi, based upon the record of Mr. Meese's attitude toward the civil rights of other groups—we've gone over that at some length during the earlier days of these hearings—what do you think that Mr. Meese's confirmation would portend for civil rights and liberties of the gay-lesbian groups?

Mr. LEVI. Unfortunately, no one in this administration has really gone on record on the subject, so we can only carry forward the attitudes we've seen in regard to other minority groups. And in that regard we're very concerned.

Senator KENNEDY. How about the immigration law, things like that?

Mr. LEVI. On the immigration issue we have attempted to have discussions with the Justice Department. We have had meetings with low level officials; we have been able to express our opinion but nothing beyond that.

A more specific example would be in the failure to prosecute Dan White in the Harvey Milk-George Moscone murder, where, I think, we can argue very strongly that the civil rights of both Harvey Milk and George Moscone were violated, and yet the Federal Government refused to press charges. The Reagan Justice Department refused to press charges.

Senator **Kennedy**. So you don't believe that there would be any reason for the community to feel much confidence in terms of equity and fairness.

Mr. **Levi**. Absolutely.

Senator **Kennedy**. Thank you.

The **Chairman**. The distinguished Senator from Ohio.

Senator **Metzenbaum**. Mr. Chairman, I think I would reserve my time until the entire panel has been heard from.

The **Chairman**. Our next witness is Ms. Escutia.

Ms. **Escutia**. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I am Martha Escutia, legislative director of the National Council of La Raza, a Hispanic organization with over 1 million Hispanics as constituency.

We are here to oppose Mr. Meese's nomination as Attorney General. The Department of Justice which oversees most major civil rights enforcement efforts, the enforcement of criminal justice laws, and the Immigration and Naturalization Service is of particular importance to Hispanics throughout the United States, and the choice of Attorney General is therefore key to the future of our Hispanic constituency.

I will briefly summarize our main concerns. Over the past 3 years we have witnessed a broad-based campaign of administrative and regulatory changes which have substantially and negatively altered Federal policies and programs which benefit low income and minority persons.

The Department of Justice, in conjunction with the White House legal and domestic policy staff, under the guidance of White House counselor Edwin Meese, has often been at the forefront of these changes.

It was this administration, through both the White House and the Department of Justice, which obstructed for nearly a year and a half the reauthorization of the Voting Rights Act and which opposed the use of an effects test to prove discrimination.

It is this administration's Department of Justice which abandoned the effects test for fair housing enforcement. It was this administration, and the White House directly, which permitted the U.S. Commission on Civil Rights to expire through its unwillingness to negotiate on reauthorization legislation, and finally succeeded in undermining the Commission's independence by insuring that a majority of members supported the President's civil rights policies.

It was this administration, through the Department of Justice and White House staff, which decided that the Internal Revenue Service could no longer deny tax exempt status to private schools which discriminate and which argued this point before the Supreme Court.

It is this administration, through the Department of Justice, which continues to oppose busing to achieve desegregation in our Nation's schools, and which has sought to overturn court-ordered busing plans.

It is this administration, as part of its New Federalism plans, which initiated block grants to the States and gave States responsibility for assuring civil rights compliance without any training or assistance in how to do so.

It is this administration, through its Department of Justice, which initiated Project Jobs, a series of immigration raids directed primarily against Hispanics, and attempted to convince the American public that undocumented workers were at the root of this Nation's unemployment problems. In the process, the civil rights of many legal residents and citizens were violated, and the initiative was deemed illegal in at least one State.

It is this administration through its Justice and Labor Departments, which seeks to limit the number of Federal contractors which must submit affirmative action plans, and which continues to argue before the Supreme Court against affirmative action plans which include goals and timetables.

This pattern of practice has made it necessary for civil rights groups, such as ours, to closely scrutinize the record on qualifications of all nominees to positions of importance. The nomination of Edwin Meese as Attorney General has therefore been subjected to extended consideration and review.

We are particularly concerned with Mr. Meese's nomination since over the past years he has come to symbolize the insensitivity for minority and low-income persons, and their issues, which has become a landmark of this administration.

In his current position as White House counselor, Mr. Meese has often been one of the leading forces in policy changes and recommendations. We are not here to question Mr. Meese's personal philosophies, but rather the merits of his nomination as U.S. Attorney General, a position which mandates a commitment to vigorous law enforcement of both civil and constitutional rights.

Any nominee to this position must stand ready to commit him or herself to policies including the following:

A vigorous and active enforcement of the Voting Rights Act, including an increased focus on enforcement of bilingual provisions and unqualified opposition to recent efforts seeking to eliminate bilingual ballots; a strict enforcement of fair housing laws; a continued adherence to legislative and judicial intent in enforcement of education-related civil rights policies; active enforcement of employment discrimination laws.

In conclusion, unfortunately given Edwin Meese's personal involvement in many of the anti-civil rights activities, which this administration has undertaken, the National Council of La Raza must oppose his nomination.

Thank you very much.

[The statement of Ms. Escutia follows:]

Presented By:

Martha Escutia
Legislative Director

THE NATIONAL COUNCIL OF LA RAZA

Mr. Chairman and members of the Committee, I am Martha Escutia, Legislative Director of the National Council of La Raza (NCLR). I am happy to address members of this Committee on an issue of such vital importance to our Hispanic constituency as the nomination and confirmation of the U.S. Attorney General, the chief law enforcement officer of our nation. As a representative of over one million Hispanics, NCLR is aware of the numerous and diverse responsibilities of the Department of Justice which directly affect the lives of minorities, women and low-income persons in this country. The Department of Justice, which oversees most major civil rights enforcement efforts, the enforcement of criminal justice laws, and the Immigration and Naturalization Service (INS), is of particular importance to Hispanics throughout the United States, and the choice of Attorney General is therefore key to the future of our Hispanic constituency.

Over the past three years we have witnessed a broad-based campaign of administrative and regulatory changes which have substantially and negatively altered federal policies and programs which benefit low-income and minority persons. The Department or Justice, in conjunction with the White House legal and domestic policy staff -- under the guidance of White House Couselor Edwin Meese -- has often been at the forefront of these changes. It was this Administration, through both the White House and the Department of Justice, which obstructed, for nearly a year and a half, the reauthorization of the Voting Rights Act, and which opposed the use of an "effects" test to prove discrimination. It is this Administration's Department of Justice which has abandoned the effects test for Fair Housing enforcement, and which has limited Fair Housing violations by refusing to bring suit against local governments which institute exclusionary zoning laws. It was this Administration, and the White House directly, which permitted the U.S. Commission on Civil Rights to expire through its unwillingness to negotiate on reauthorization legislation and which finally succeeded in undermining the Commission's independence by ensuring that a majority of members supported the President's civil rights policies.

It was this Administration, through its Department of Justice and White House staff, which decided that the Internal Revenue Service (IRS) could no longer deny tax-exempt status to private schools which discriminate and which argued this point before the Supreme Court. It is this Administration, through the Department or Justice, which continues to oppose busing to achieve desegregation in our nation's schools and which has sought to overturn court-ordered busing plans.

It is this Administration, through White House decisions, which annually requests zero funding for the Legal Services Corporation, which provides free or reduced-rate legal assistance to low-income persons involved in non-criminal cases. It is this Administration, as part of its New Federalism plans, which initiated block grants to the states and gave states responsibility for assuring civil rights compliance, without any training or assistance in how to do so. It is this Administration, through its Department of Justice, which intitiated Project Jobs, a series of immigration raids directed primarily against Hispanics, and attemptea to convince the American public that undocumented workers were at the root ot this nation's unemployment problems; in the process the civil rights of many legal residents and citizens were violated and the initiative was deemed illegal in at least one state. It is this Administration, through its Justice and Labor Departments, which seeks to limit the number of federal contractors which must submit affirmative action plans, and which continues to argue before the Supreme Court against affirmative action plans which include goals and timetables.

It is also this Administration which has significantly reduced the enforcement of federal civil rights laws in almost all substantive areas, including Fair Housing, Voting Rights, education, health and human services, and employment. This has been accomplished through major changes in definitions, eligibility requirements, and interpretations of the laws, as well as reduced staffing levels, increased voluntary enforcement activities, and decreased compliance reviews. Even when the Administration has been unsuccessful in changing the language of the laws, leading Administration officials are not vigorously enforcing the laws which we do have.

This "pattern of practice" has made it necessary for civil rights groups such as ours to closely scrutinize the record and qualifications of all nominees to positions or importance within this Administration. The nomination of Edwin Meese as Attorney General has therefore been subjectea to extended consideration and review. We are particularly concerned with Mr. Meese's nomination, since over the past three years he has come to symbolize the insensitivity for minority and low-income persons and their issues which has become a landmark of this

Administration. In his current position as White House Counselor, Mr. Meese has often been one of the leading forces in policy changes and recommendations. We are not here to question Mr. Meese's personal philosophies, but rather the merits of his nomination as U.S. Attorney General, a position which mandates a commitment to vigorous law enforcement of both civil and constitutional rights. Any nominee to this position must stand ready to commit him or herself to policies including the following:

- Vigorous and active enforcement of the Voting Rights Act, including the initiation of major new lawsuits challenging discriminatory practices, strong support for minority voters rights (as opposed to current DOJ practices which have often defended state and local jurisdictions against court findings of discrimination), and increased focus on enforcement of bilingual provisions, including unqualified opposition to recent efforts seeking to eliminate bilingual ballots.

- Strict enforcement of Fair Housing laws, including the identification of major new "precedent-setting" cases (as opposed to current DOJ involvement in relatively minor cases), renewed use of the "effects" test to determine housing discrimination, and assurance of Fair Housing application to all discriminatory actions, including exclusionary zoning laws.

- Continued adherence to legislative and judicial intent in enforcement of education-related civil rights policies, including denial of federal funds to schools which discriminate, and strict enforcement of school desegregation laws, at all educational levels and using all available and appropriate remedies.

- Active enforcement of employment discrimination laws, particularly affirmative action efforts which include goals and timetables and ensure relief from past discriminatory practices (as opposed to current DOJ opposition to such remedies), with strong support for class action suits, including the active identification of employers involved in patterns of practice which discriminate against minorities or women.

- Assurance that DOJ will swiftly promulgate required minimum standards for all federal agencies regarding civil rights compliance under federal programs, including strong support for the use of compliance reviews and data collection as means of identifying violations (as opposed to current emphasis on voluntary compliance and removal of data collection requirements), with particular consideration given to civil rights enforcement under the block grant programs.

- Promise of support for the continued existence of the Legal Services Corporation and its crucial role in providing low-income persons access to the legal system, with particular acknowledgment of the importance and appropriateness of its involvement in class action suits, which stop illegal practices which affect a large number of persons.

- Appointment of an increased number of Hispanics, with the necessary qualifications and experience, as federal judges, in recognition of the severe underrepresenation of Hispanics in positions of importance within the federal judiciary system.

- Establishment of specific demonstration programs and review of procedures to assure equitable treatment within the criminal justice system for minorities, who, as a class, have been subject to a disproportionate number of arrests, enequitable treatment with regard to bail bonding, poorer legal representation, a higher number of convictions, proportionately less probation, significantly longer sentences, and low enrollment in correctional rehabilitation and training programs. Some mechanisms must be established to replace the criminal justice demonstration projects in minority communities, which were previously funded by the Law Enforcement Assistance Administration's Office of Community Anti-Crime Programs, and increased funding is needed for special services for Hispanics, such as interpreters and alternatives to incarceration for youth.

- Initiation of policies within the Immigration and Naturalization Service (INS) which will improve its service delivery role, by ensuring that all persons with whom it has contact are treated equally, establishing a code of ethics and improved training programs for all INS officers, and improving resources for prompt processing of visa and naturalization applications, as recommended by the Select Commission on Immigration Reform.

- In the event of passage of a comprehensive immigration bill, implementation of the legalization program in a manner which will be "inclusive" rather than exclusive, including the establishment of strict confidentiality policies, waiver of the "public charge" exclusion when the applicant can show a steady work history and non-use of welfare programs, and allowance of affidavits from credible sources for proof of "continuous residence" requirements.

- Re-establishment of the Hispanic Advisory Council to the Attorney General, to ensure that Hispanic issues and concerns are regularly addressed by the Department of Justice.

The National Council of La Raza, in outlining these necessary commitments, seeks to ensure that the person appointed to be our nation's chief law enforcement officer will enforce the laws equitably and comprehensively. We do not want an Attorney General who uses his own discretion in the application of laws, who reinterprets laws to agree with personal or Administration philosophies, who refuses to enforce court orders or legislative mandates, or who redefines a problem in order to eliminate it. We want an Attorney General who will vigorously enforce all of our nation's laws, and who will be particularly concerned with the severe legal-related problems facing low-income and minority persons in our nation.

Solid commitment to all of the outlined activities would identify a person capable of filling this key position. Unfortunately, given Edwin Meese's personal involvement in many of the anti-civil rights activities which this Administration has undertaken during the past three years, the National Council of La Raza must oppose his nomination. Should Mr. Meese be confirmed, nothing would make us happier than to be proven wrong in our assumptions. We ask this Committee to ensure that the Department of Justice will be administered by a person committed to carrying out its mission of equitable enforcement of all laws.

The **Chairman**. Thank you very much. The Senator from Massachusetts.

Senator **Kennedy**. I was interested in your reaction to Mr. Meese's response to my observation that of the 124 judges that have been appointed by this administration there are only 5 Hispanic and 3 that were made judges in Puerto Rico, as I understand, so there's only 2 outside of Puerto Rico.

I feel that that's is disgraceful record. I'm wondering what your membership feels about that record, and whether they've been consulted in the past about the situation.

Ms. **Escutia**. Yes, Senator Kennedy; the National Council of La Raza, and I'm sure that also MALDEF and LULAC are aware of the void of Hispanic judges in the Federal court system. We have recommended—as a matter of fact, I mention this in my written testimony—that perhaps it might be a good idea for the U.S. Attorney General to reestablish the Hispanic advisory council which at one time was in existence, and the purpose of this council was to insure that Hispanic issues and concerns were regularly addressed by the Department of Justice. The void of Hispanic judges in the Federal court system is obviously one of the issues of main concern to us. There are Hispanic attorneys out there who are more than qualified, and we feel that this is an issue that should be addressed by the Attorney General.

Senator **Kennedy**. That's a good suggestion and I'll ask him about that recommendation. Of course, it all depends then whether they're going to implement it or how they will react to your various recommendations.

To your knowledge has there been any effort by the administration to reach out to your organization to try and find a qualified member for any place in the judiciary?

Ms. **Escutia**. Every time when the National Council of La Raza is aware of any kind of appointment position available, we do submit names or we do support or not support any candidates that have been put forward by the administration.

Senator **Kennedy**. What reaction have you gotten to date?

Ms. **Escutia**. So far we have, the National Council of La Raza has supported several candidates for the position of Department of Labor Under Secretary of Employment and Training Administration.

We have submitted telegrams to the chief of staff, James Baker, in support of certain of these nominations. And we have not received any response.

Senator **Kennedy**. How long ago was that?

Ms. **Escutia**. Sometime late last year, October-November.

Senator **Kennedy**. Thank you very much, Mr. Chairman.

The **Chairman**. Thank you. I want to thank you all for appearing. Senator Specter will take over the Chair now. After we finish this panel, we're going to panels—to accommodate Senator Metzenbaum—we're going to panels 5 and 6, and then we're going to the finance witnesses after that. And we'll return to the panels after the finance witnesses.

Senator **Specter** [presiding]. Mr. Gnaizda, Public Advocates, Inc. Welcome, Mr. Gnaizda.

Mr. GNAIZDA. Thank you, Senator. My name is Bob Gnaizda, and I am a partner in Public Advocates, and national legal counsel for the League of United Latin American Citizens.

My testimony cuts across partisan lines, and it cuts across ideological lines. My background for providing this testimony is that I was the director of the Salinas office of California Rural Legal Assistance from 1966 to 1968 and the director of litigation and the deputy director of CRLA from 1968 to 1971.

My testimony, I believe, will help you to compare Mr. Meese's words of today with his deeds of yesterday. Specifically I wish to refer you to his conduct during the period 1970 to 1971. He was a lawyer then for 12 years. He was the chief of staff for Governor Reagan.

He was also his alter ego, and viewed by many as the de facto governor, and played the major role in regard to legal services.

During this time period Mr. Meese engaged in a widespread vindictive public witch hunt against 44 California rural legal assistance attorneys.

He filed 127 different charges of unethical conduct against them with the State bar and with the Federal OEO. He charged them with fomenting violence in the prisons, with stirring student unrest, and a wide range of other unethical conduct.

But when he filed those charges, he was on notice that they were false, and knew that they were false. He never sought any information from those he charged, although the director of CRLA, his classmate, now California Supreme Court Justice Cruz Reynoso also sought to meet with him.

He had the well-known former U.S. Supreme Court Justice Tom Clark report that had just exonerated CRLA before him. He had the GAO report that exonerated CRLA before him. He had the complaints of the NLADA and of the bar associations regarding the unethical tactics involved in securing information. But he ignored them all, and publicly attacked them.

One of his own attorneys, William Bradford stated: "The State officials who know the facts told me that the specific charges in it are without foundation." Continuing the quote, "It is inexcusable for any public official to charge anyone with dishonesty without having corroborating, unimpeachable evidence to back it up. But this is exactly what State officials have done."

Finally, the Nixon-appointed Judicial Commission, composed of three Republican State supreme court justices, from Maine, Colorado, and Wisconsin investigated the charges, heard from 166 witnesses, and this is what they said about the charges: "It should be emphasized that the complaints contained in the report and the evidence adduced thereon do not either taken separately or as a whole furnish any justification whatsoever for any finding of improper activities by CRLA. The Commission expressly finds that in many circumstances the report has taken evidence out of context and misrepresented the facts to support the charges against CRLA. In so doing, the report has unfairly and irresponsibly subjected many able, energetic, idealistic, and dedicated CRLA attorneys to totally unjustified attacks upon their professional integrity and competence.

"From the testimony of the witnesses, the Commission finds that these charges are totally irresponsible and without foundation."

What did Mr. Meese do then? Did he apologize? Did he repudiate the charges? Not at all. He stood by them proudly and has to this very day. In fact, 45 days after the charges were found to be totally false, he promoted the man who was his classmate and who he had hired to do the report to a higher position in the State administration.

In conclusion, I have two observations: If Mr. Meese was not engaged in a witch hunt, there's only one other alternative, and it is not particularly comforting. That is, that Mr. Meese is a slipshod, shoot-from-the-hip attorney who in his blind zeal to achieve a goal may trample rights and wound thousands.

Finally, Chief Justice Burger has spoken of elevating the legal profession. I believe Mr. Meese's confirmation would demean it. Thank you.

[The statement of Mr. Gnaizda follows:]

ED MEESE KNOWINGLY FILED 127 FALSE CHARGES AGAINST FORTY-FOUR CALIFORNIA RURAL LEGAL ASSISTANCE ATTORNEYS IN 1970-71

TESTIMONY SUBMITTED BY ROBERT L. GNAIZDA[1]

> "The [Nixon Judicial] Commission expressly finds that in many instances the [Meese/Reagan Report] has taken evidence out of context and misrepresented the facts to support the charges against CRLA. In so doing, the [Report] has unfairly and irresponsibly subjected many able, energetic, idealistic and dedicated CRLA attorneys to totally unjustified attacks upon their professional integrity and competence."
>
> (Nixon Judicial Commission Decision (1971) at 88)

> "I am convinced in my own mind from the facts that I know, that this is a report that state officials issued containing charges that they knew are not true."
>
> "And they agreed with me several months before this report was published that these charges were not true . . . ."
>
> (Sworn Testimony of Reagan Administration attorney at Commission Hearings, Tr. at 1072-73)

DEAR MR. CHAIRMAN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE:

This testimony is submitted on behalf of the League of United Latin American Citizens, Public Advocates, and the Mexican American

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[1] Mr. Gnaizda is a graduate of Yale Law School (Class of 1960), headed the Salinas office of California Rural Legal Assistance from 1966-68, and was Deputy Director and Director of Litigation for CRLA from 1968-71. He founded Public Advocates, a public interest law firm, in 1971. He is presently a partner at the firm and national legal counsel to the League of United Latin American Citizens. From 1977-80, he was the elected Republican representative for the California State Bar on the Federal Judicial Selection Commission, and was unanimously elected by the State Bar Board of Governors to a second term on this Commission.

Legal Defense and Educational Fund,[2] as you consider Mr. Meese's fitness to be Attorney General.

A Critical Issue Is Ethics

Although I generally disagree with Mr. Meese's positions on the poor and legal services, my testimony relates solely to the more critical and fundamental question of whether Mr. Meese, without regard to his ideology, is ethically fit to be our nation's chief law enforcer, particularly in light of the broad FBI and tax enforcement powers that he would control.

Our concern -- at a time when the Chief Justice urges higher lawyer standards -- is that Mr. Meese does not appear to meet existing standards of conduct required of run-of-the-mill lawyers.

Specifically, our conclusions as to Mr. Meese's moral fitness spring from his conduct during 1970-71. As then-Governor Reagan's Chief of Staff (and at many times *de facto* governor), and head of the Governor's five member cabinet, Mr. Meese launched a highly visible all-out witchhunt against the legal reputations of forty-four California attorneys serving with California Rural Legal Assistance. California Rural Legal Assistance was at the time generally considered the leading legal service program for the poor,[3] and Mr. Meese's charges were found by a Nixon-appointed commission of three Republican judges to be utterly false and recklessly made.

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[2] The League of United Latin American Citizens is the nation's largest Hispanic membership organization; the Mexican American Legal Defense and Educational Fund is the nation's largest Hispanic legal advocate; and Public Advocates is the national public interest law firm representing the disadvantaged and based in San Francisco.

During 1970-71, when the false charges were filed (and conclusively rebutted), I was the Deputy Director of CRLA, and the testimony I present today from that uniquely personal vantage point demonstrates, I believe, Mr. Meese's willingness to abuse his power and to use dishonest means to achieve partisan ends.

Meese Involvement In Filing False Charges

By July 1970, Mr. Meese's growing distaste for CRLA's activities and successes induced him to orchestrate an ambitious plan for its destruction. These successes included enlarging the food stamp and school lunch programs, preserving threatened welfare and MediCal benefits, and enhancing the rights and working conditions of farm workers. As Governor Reagan's Chief of Staff, Mr. Meese secured the appointment of Lewis Uhler to the head of the California Office of Economic Opportunity. Mr. Uhler was a good friend of Mr. Meese, and a former Yale College and Boalt Law School classmate; he was also a well-known and outspoken member of the John Birch Society. Mr. Uhler's chief function was to conduct an extensive smear campaign against CRLA.[4]

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[3] In 1968, precisely when Mr. Meese first began to attack CRLA, it was selected by the National Advisory Committee for Legal Services (a committee that included the presidents of the American Bar Association and American Trial Lawyers Association), as the outstanding legal service program in the country.

The president of MALDEF referred to CRLA as "Chicano Rural Legal Assistance" in honor of its unique services to Hispanics and the farm workers.

Just as this campaign got underway, a committee of 13 prominent lawyers, headed by retired Supreme Court Justice Tom Clark, completed a comprehensive investigation of CRLA. The Justice Clark Committee found CRLA to be an exemplary program, and determined that charges made against it by the Reagan Administration and by large agri-business interests were untrue. (The Justice Clark findings were consistent with other similarly comprehensive national investigations of CRLA conducted annually since CRLA's inception, including one by the General Accounting Office.)[5]

On December 26, 1970, with full knowledge of the Justice Clark Report, the prior GAO report, and criticisms of his investigatory techniques from the National Legal Aid and Defenders Association -- and after refusing to consider evidence to the contrary[6] -- Mr. Meese publicly filed with the federal Office of Economic Opportunity 127 charges of unethical conduct against CRLA's forty-four lawyers. The charges included fomenting violence in the prisons, stirring unrest in the schools, filing suits solely to harass and intimidate, unlawfully soliciting clients and acting in an unethical fashion.

Most of these charges, if true, could have subjected these young lawyers to strong disciplinary action from the State Bar, including possible suspension and disbarment. And whether true or not, such charges could have caused substantial harm to these lawyers' reputations and prospects for future employment. (Mr. Meese simultaneously submitted these charges to the State Bar, which apparently thought them without sufficient merit to warrant a formal investigation.)

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[4] Sacramento Bee, May 14, 1971, at A4.

[5] A chronology of events and an examination of Mr. Meese's authority during this period are attached as Exhibit A.

[6] Meese refused, for example, to meet with CRLA lawyers or to charge them directly before making the charges public.

At the time Mr. Meese publicly aired these charges, he had been informed by one of the Reagan Administration's own attorneys, Deputy Attorney General William Bradford, that the charges were false and that they should not be filed. Bradford had represented the Administration in many of the CRLA cases at issue. Soon after the Administration ignored his warning and filed the charges, he filed a public letter with the federal Office of Economic Opportunity stating that:

> "The state officials who know the facts told me that the specific charges in it are without foundation . . ."
>
> "It is inexcusable for any public official to charge anyone with dishonesty without having corroborating, unimpeachable evidence to back it up. But this is exactly what state officials have done . . . ."[7]

Bradford then went on to state that he was aware of at least two Reagan attempts to damage CRLA through "clearly unethical" means such as complaining to the State Bar. This was temporarily dropped "because I objected that we had nothing to support such charges . . . ."[8]

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[7] Letter by Bradford to Frank Carlucci, the head of federal OEO, as reported in the Merced Sun Star, January 25, 1971.

[8] Id.

Nixon Judicial Commission Finds Charges False And Damaging To 44 Lawyers' Integrity

As a result of the continuous public airing of Mr. Meese's charges of unethical conduct, and a series of high level meetings of Meese and Reagan with President Nixon, Attorney General Mitchell, Vice President Agnew and federal OEO officials, President Nixon appointed an independent judicial commission to investigate the charges.

The Judicial Commission consisted of three Republicans. Two were retired chief justices of the Maine and Wisconsin state supreme courts and the other a justice on the Colorado Supreme Court. After taking sworn testimony from 166 witnesses in ten cities and reviewing hundreds of documents, this conservative and independent commission unanimously found that the 127 charges of unethical conduct and fomenting of violence and unrest were totally baseless. As documented in its 88-page report and more than 200 pages of accompanying exhibits, the Commission found that:

> "[the] charges of wrongdoing on the part of CRLA set forth in the [Administration's Report] are unfounded and without merit." (p. 82)
>
> "the Commission finds that any charges of impropriety with respect to activities within the prisons are completely baseless. After exhaustive hearings, both at Soledad and San Francisco, not a shred of evidence showing actual misconduct of CRLA has been adduced." (p. 82)
>
> "It should be emphasized that the complaints contained in the [Report] and the evidence adduced thereon do not, either taken separately or as a whole, furnish any justification whatsoever for any finding of improper activities by CRLA." (p. 83)
>
> "The Commission expressly finds that in many circumstances the [Report] has taken evidence out of context and misrepresented the facts to

> support the charges against CRLA. In so doing, the [Report] has unfairly and irresponsibly subjected many able, energetic, idealistic and dedicated CRLA attorneys to totally unjustified attacks upon their professional integrity and competence." (p. 88, emphasis added)
>
> "From the testimony of the witnesses [and all other evidence] the Commission finds that these charges are totally irresponsible and without foundation." (p. 88)

The Commission then concluded by commending CRLA as operating in a "highly competent, efficient, and exemplary manner." (p. 88)

During the course of these judicial hearings -- at which Mr. Meese and the Administration refused to appear and directly substantiate their charges[9] -- Deputy Attorney General Bradford testified that the Reagan Administration knew that the charges of unethical conduct were false long before they were brought, and that state officials had admitted to him that they knew these charges to be false.

> "I am convinced in my own mind from the facts that I know, that this is a report that state officials issued containing charges that they know are not true."
>
> "And they agreed with me several months before this report was published that these charges were not true. . . ."

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[9] The Judicial Commission frequently and publicly requested that the Administration back up its charges in a judicial proceeding subject to cross-examination. The Administration continuously refused to do so and instead secured independent private lawyers, who did not hold themselves responsible for the charges, to participate in the hearings. The Administration, angry at the Commission for requiring it to back up its charges, publicly demanded that the Commission resign or be disbanded. See 24 Hastings Law Journal, pp. 599-646, for full details of the Commission proceedings.

> "I think that this report is a very bad example of what happens when the philosophy against certain groups overcome people's rationality."
>
> (Rptr. Tr. at pp. 1072-73)

Meese Rewards Unethical Behavior

Despite this conclusive Judicial Commission determination that the charges of unethical conduct were false and baseless, Mr. Meese continued to disseminate these charges. To the best of our knowledge he has never repudiated or apologized for making these charges that could have been so damaging to the careers of forty-four young lawyers. In fact, it appears that he remains proud of these charges. For example, forty-five days after the charges were found to be false by the Judicial Commission, he rewarded his colleague who had prepared the report, Lewis Uhler, with a major promotion to Assistant Secretary of the State Human Relations Agency (the agency that had unsuccessfully opposed CRLA in most of the cases cited in the 127 charges). Over the next two years, Mr. Meese ensured that Mr. Uhler was also appointed to three prestigious gubernatorial task forces, including Chairman of the Governor's Tax Reduction Task Force, which included such illustrous names as Milton Friedman, Peter Drucker, and J. Clayburn La Force.

Violations of Bar Ethical Rules

It should be obvious that Mr. Meese's damaging, baseless and unretracted charges were unfair, unethical and fell below any conception of ethical conduct demanded of even run-of-the-mill lawyers, still less of the Attorney General of the United States.

His conduct also violated established, formal rules of professional conduct, to which the top lawyer in America ought certainly be held. We have attached a brief analysis (Exhibit B) of some of the specific ethical violations implicated by Mr. Meese's conduct, based on the American Bar Association's Model Rules of Professional Conduct and the California Rules of Professional Conduct.

ABA Rule 8.4, for example, provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, misrepresentation, deceit or fraud, or conduct that is prejudicial to the administration of justice. The official Comment to this Rule adds:

> "Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of an attorney."

(Rule 8.4, emphasis added)

Similarly, ABA Rule 4.1 states that a lawyer shall not knowingly "make a false statement of material fact or law to a third person" (emphasis added), while ABA Rule 3.1 comments that a lawyer shall not bring an action primarily for the purpose of "harassing or maliciously injuring a person."

Furthermore, California State Bar Rules and procedures provide that complaints against attorneys made to State Bar officials are the exclusive remedy for charges such as these, that such complaints are confidential unless they result in disciplinary action being taken against the attorney, and that investigations of complaints shall not be public. (Rule 220) Thus, by making his charges of unethical conduct public, rather than privately filing with the State Bar, Mr. Meese also violated the California Bar Rules and procedures.

In considering the impact of Mr. Meese's past conduct on his possible performance as United States Attorney General, it is important to note that, as California gubernatorial chief of staff, and even as de facto governor, he did not possess a fraction of the power he would have as Attorney General to effectively file and prosecute possibly false charges. In California, the attorney general is a separately elected position and historically has been completely independent from the chief executive. Had the Attorney General's office been part of the Governor's administration, Deputy Attorney General Bradford's testimony probably would not have surfaced, and it is possible that criminal charges would have been brought against many of the CRLA attorneys, particularly those falsely accused of fomenting violence in the prisons and stirring unrest among high school students. Because the investigatory and enforcement powers of the United States Attorney General are so vast and their exercise is so potentially unaccountable, Mr. Meese's past conduct should give this Committee grave concern.

Any Means To Achieve An End?

Regarding Mr. Meese's CRLA actions and apparent lack of respect for the legal process, there appear to be but two conclusions. One is as I have suggested, that Mr. Meese carried out a vindictive witchhunt. The other is no more comforting -- that Mr. Meese is a careless, slipshod, shoot-from-the-hip attorney who in his zeal to achieve a goal may trample rights and leave thousands wounded.

In conclusion, the country's chief officer of the law should be someone who raises the level of ethical and moral conduct in this country, not someone who fails to meet even the minimal ethical standards required of an ordinary lawyer. In any event, it should not be a person who through his actions has indicated a willingness to use disturbingly suspicious means to achieve his ends.[10]

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[10] Further questions and answers as to Mr. Meese's role and actions concerning the 127 charges can best be determined by examining the Meese and Reagan restricted access papers lodged at the Hoover Institution Library. To date, Mr. Meese (a trustee of the papers) has refused permission to examine them. It is hoped that Mr. Meese, having nothing to hide, will permit an independent investigation of these papers under this Committee's prodding.

Exhibit A

ED MEESE'S RELATIONSHIP TO LEWIS UHLER AND THE UHLER-REAGAN REPORT ON CRLA*

January 31, 1984

Background

Lewis Uhler and Ed Meese were classmates at Yale College (Class of '55) and Boalt Law School (Class of '58). According to the LA Times reporter who knew Meese well during this period, Ed Meese was a close friend of Lewis Uhler during the period at issue and they socialized on a frequent basis. (Los Angeles Times, January 29, 1984, Part IV, by Bill Boyarsky)

According to the LA Times' Boyarsky, Meese brought Lewis Uhler into the Reagan Administration. "Uhler, a former John Birch Society member ... was considered on the far right.... Uhler had considerable influence because of his close association with Meese...."

Boyarsky specifically states: "The Meese-supported attack on California Rural Legal Assistance was evidence of a strong [Meese] ideology that was later felt in Washington.... And Meese's hostility to legal services continued in Washington with his criticisms of the Legal Services Corporation...."

Uhler was appointed by Reagan-Meese as the head of the state OEO to investigate CRLA on July 2, 1970.** This was at approximately the time that the independent Justice Tom Clark Commission investigated CRLA and found it to be an exemplary program.

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* Prepared by Public Advocates staff.

** Uhler, although not then a member of state government, was named by Reagan to the State Law Revision Commission on January 29, 1968.

Almost immediately after the Nixon-appointed judicial Commission found the Uhler-Reagan report to be without basis, Meese arranged for Uhler to be promoted to Assistant Secretary of the Human Resources Development Agency, the agency that had unsuccessfully fought CRLA on various farm and welfare issues.

On September 1, 1972, Lewis Uhler was made Chairman of the Governor's Tax Reduction Task Force, apparently as the result of Meese's intervention. This was one of Reagan's most prestigious task forces and included such illustrious names as Milton Friedman, Peter Drucker and J. Clayburn La Force, the chairman of Reagan's recent so-called "Hunger Commission".

In 1973, Uhler also became a member of the Governor's criminal task force known as "Public Safety Task Force," which was headed by Ed Meese.

In approximately March of 1973, Lewis Uhler was made a steering committee member of Reagan's Local Task Force on Government Reorganization; Meese was also a steering committee member. (California Journal, January and March, 1973)

General Power of Meese While Chief of Staff for Governor Reagan

Meese was generally considered the alter ego for Governor Reagan between 1970 and 1974. Basically, nothing could get to the

Governor of any importance without going through Meese. (CRLA during the period 1970-71, was a matter that the Governor was openly and heavily involved in.)

As Ed Meese stated in an interview with the California Journal (June 1970) in which he described the operation of his office, no significant matter escaped careful scrutiny by the Governor's Cabinet. The Cabinet was headed both structurally and in spirit by Meese. He says, for example, its function was

> "to make sure the Governor is getting information from as many vantage points as possible ... [and to make sure] the issue is fairly presented and all the alternatives are available to the Governor and where he has a maximum of information concisely organized so that he's not deciding policy on only partial information. There are two or more sides to almost every issue in government and it would be unfortunate if the Governor only got part of the facts, had to make up his mind on the basis of only partial information. I think all of us in the Cabinet, as well as the members of the staff, feel responsibility for an orderly policy-making process, but I feel it particularly keenly.

Meese went on to say

> ... the cabinet is the central focus of policy-making and recommendations of policy decisions to the Governor. We try to utilize the cabinet meetings and the cabinet system in that form so we don't have people trying to make policy by getting the Governor in a situation where he only gets the facts they present.

Ed Meese, as Chief of Staff (February 1969 to December 1974), was the only member of the Governor's staff to serve on the Cabinet. In addition to Meese, the Cabinet consisted of four agency secretaries. It was therefore quite intimate. All issues from department heads must be presented to the Cabinet and generally personal presentations were also required. (California Journal, June 1970).

Some Specifics Regarding Meese and the Uhler-Reagan Report

Meese from 1968 on, when he was the Governor's Legal Secretary, was actively involved in attacking CRLA. For example, on January 8, 1970, Meese personally announced approval of a federal OEO grant to CRLA based on four conditions set forth by the Reagan Administration. (Reagan Press Release #13 for 1970)

On December 26, 1970, Meese sent a letter to federal OEO regarding the Governor's veto and requested a personal opportunity for a personal meeting with federal OEO in order to present evidence in support of the veto.

On December 26, 1970, Meese personally issued a press release on the veto which referred to Meese as announcing the veto of CRLA and informing federal OEO of such.

On December 28, 1970, Uhler held a press conference and announced that he and Meese would go to Washington early the following week to argue the CRLA case.

The LA Times, December 29, 1970, page 17, stated that Meese would act as the go-between for the Reagan Administration on this issue.

On December 30, 1970, Meese publicly announced that Reagan had granted a 30-day extension for CRLA in order to allow federal OEO time to examine the "evidentiary documents to be presented in support of the governor's veto by California OEO Director Lewis K. Uhler and other state officials." (Pres Release #588)

Uhler is referred to as the governor's spokesperson by the

New York Times in an article dated January 3, 1971. The article refers to the fact that CRLA had been praised by the California, Los Angeles, San Francisco and Sacramento bar associations.

According to the Sacramento Bee, January 8, 1971, federal OEO personally called Meese regarding additional documentation it wanted.

On January 26, 1971, according to the Merced Sun Star, State Deputy Attorney General William Bradford made his charges regarding the Uhler-Reagan report public. Bradford charged Uhler with deliberately filing false accusations and admitting that such were false. He further stated that he told them and they admitted that they had no evidence regarding a number of serious charges made against CRLA.

On January 28, 1971, Reagan held a press conference discussing the CRLA issue in detail. Meese spoke at the press conference on CRLA at Reagan's urging. Reagan also admitted that he had a one and one-half hour personal meeting with President Nixon on the CRLA issue during the prior week. (Fresno Bee, January 28, 1971)

According to the January 31, 1971, San Diego Union, Reagan, at voluminous length, discussed CRLA at the National Press Club in Washington, DC and also during the course of his 1971 State of the State address. Reagan set forth in specific detail allegations regarding the Uhler-Reagan report.

According to the LA Times, February 2, 1971, Meese signed a 6-month CRLA extension.

According to the Sacramento Bee, February 5, 1971, Uhler stated that Reagan wished to eliminate all government legal aid plans.

According to the Long Beach Independent, February 27, 1971, Meese spoke at length in Washington, DC regarding CRLA and his personal talk with Frank Carlucci, the head of federal OEO.

According to the Washington Post, April 18, 1971, the State of California intended to boycott all commission hearings, despite all the Commissioners being Republicans.

According to the New York Times, April 27, 1971, the Reagan Administration stated that it would not testify before the Commission.

On April 27, 1971, Reagan held a press conference in which almost two-thirds of the conference was devoted to CRLA. Ed Meese participated at length to defend the Administration against charges of irresponsibility. Meese also discussed their refusal to participate in Commission hearings and/or to substantiate the charges.

According to the New York Times, April 28, 1971, Reagan demanded the resignation of the entire Commission.

On May 18, 1971, Reagan held a press conference partly in response to the Commission ruling that some of the Uhler charges were not valid. Meese answered at least two questions on CRLA. Reagan referred extensively to CRLA, of his distrust of the Commission, and stated that he had no confidence in the Commission. (Oakland Tribune, May 19, 1971)

According to the Los Angeles Times, May 20, 1971, Reagan sent a telegram to Carlucci attacking the Commission and its finding that three of the charges against CRLA were without merit.

According to the Los Angeles Times of May 22, 1971, the Reagan Administration made three strong attacks through the media during the past week on the Commission.

On May 25, 1971, Reagan held a press conference announcing that he had just sent Meese to Washington to meet with Nixon officials about CRLA.

According to the LA Daily Journal, May 26, 1971, Reagan charged CRLA with involvement in the firebombing of the office of an attorney who had criticized CRLA. Reagan claimed the firebombing was to intimidate witnesses and that he was seeking an FBI investigation. However, at the time of making the charge, the Salinas police had informed him that they had picked up the accused and the accused had nothing to do with CRLA.

According to the Santa Ana Register, June 30, 1971, Meese held a press briefing regarding the OEO announcement that the charges against CRLA were false. Meese stated that the Commission Report did not discredit the Uhler-Reagan report. The Register also stated that the California Senate President had asked for Uhler's resignation.

According to the Sacramento Bee, June 30, 1971, this Meese press briefing was attended by Uhler.

On July 1, 1971, Meese sent a letter to federal OEO regarding CRLA refunding.

On August 13, 1971, Uhler was promoted to Assistant Secretary of the State Human Relations Agency (press release #488), the agency that had unsuccessfully opposed CRLA in most of the cases at issue in the Uhler-Reagan report.

Nowhere in the record, either in press articles or public Reagan documents, is there any indication of any kind that Meese and/or Reagan ever repudiated any of the Uhler charges or apologized regarding any of the charges.

Exhibit B

MEMORANDUM

To: Robert Gnaizda

From: Anita P. Arriola

Re: Ed Meese's Potential Unethical Conduct

Date: January 30, 1984

I. AMERICAN BAR ASSOCIATION MODEL RULES OF PROFESSIONAL CONDUCT (1984)

The most directly applicable rule of professional conduct in this situation is Rule 8.4 "Misconduct". That rule provides "It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the rules of professional conduct;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respect;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice."

As to "a", it remains to be seen in the discussion following whether Ed Meese has violated any of the rules of professional conduct; "b" does not apply since Ed Meese has not committed a "criminal act". However, "c" and "d" are directly applicable here. In relying and acting upon information known to him to be false, Ed Meese appears to have violated the very letter of Rule 8.4 "c". That is, he has engaged in conduct involving dishonesty, fraud, deceit and misrepresentation.

Furthermore, in relying and acting upon information that is known to him to be false and by refusing to cooperate in the investigation of charges against CRLA, Mr. Meese violated Rule 8.4 (d), that is, he has engaged in conduct that is prejudicial to the administration of justice.

The comment to Rule 8.4 is particularly apt here. The comment states, "Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of an attorney." As a public officer, then, Ed Meese is held to a higher standard of professional conduct than an ordinary lawyer.

The following rules of professional conduct are applicable here where, in attacking CRLA, Mr. Meese was doing so on behalf of a client.

Rule 3.1 states "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous." The comment to that rule states, "The advocate has a duty to use legal procedure for the fullest benefit of the client's cause but also a duty not to abuse legal procedure... An action is frivolous if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person."

Rule 4.1 states, "In the course of representing a client, a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person". The comment to that rule states "A lawyer is required to be truthful when dealing with others on a client's behalf... A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false... Misrepresentations can also occur by failures to act."

Rule 4.4 provides, "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such person."

There is no evidence to suggest that Ed Meese brought charges against CRLA other than to harrass and embarrass the staff at CRLA. Indeed, the evidence that does exist confirms the opposite conclusion. That is, based on information known to him to be false, he pursued such charges against CRLA for the express purpose of harrassing and maliciously injuring such persons at CRLA.

II. CALIFORNIA RULES OF PROFESSIONAL CONDUCT

California has not adopted the Model Rules of Professional Conduct. However, California has adopted its own rules of professional conduct. The only provision directly applicable in this situation is Rule 7-102. That rule provides "A member of the state bar in government service shall not institute or cause to be instituted criminal charges when he knows or should know that the charges are not supported by probable cause. If, after the institution of criminal charges, a member of the state bar in government service having responsibility for prosecuting the charges becomes aware that those charges are not supported by probable cause, he shall promptly so advise the court in which the criminal matter is pending." (Emphasis added)

This rule relates directly to the accusation by the Governor (Ed Meese) that persons at CRLA were responsible for the firebombing of an opposing lawyer's home allegedly in retaliation for such attorney's participation in the investigation of charges against CRLA. At the time of the accusation, however, a suspect for the firebombing had been apprehended and was known to the Reagan officials.

III. RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA

California State Bar disciplinary procedings are governed exclusively by the Rules of Procedure of the State Bar. Schullman v. State Bar of California, 10 C.3d 526, 111 Cal. Rptr. 161 (1973). These rules provide the procedure in which complaints against attorneys are made to State Bar officials and in which investigations and other formal proceedings are followed in order to pursue such complaints. Complaints against attorneys made to State Bar officials are confidential unless they result in disciplinary action being taken against the attorney. Chronicle Publishing Company v. Superior Court of San Francisco, 54 C.2d 548, 7 Cal. Rptr. 109 (1960). Further, the investigation of complaints and other investigations and formal proceedings provided in the rules shall not be public. Rule 220, Rules of Procedure of the State Bar. Except for communications regarding public hearing proceedings, in written communications, the name of the member shall not appear unless and until a recommendation of public reproval, suspension or disbarment is filed with the Clerk of the State Bar Court. Rule 222, Rules of Procedure of the State Bar.

The Rules of Procedure of the State Bar of California therefore provides the exclusive procedure in which complaints against attorneys are filed. The accusations and charges against the attorneys at CRLA involved their professional conduct as attorneys. As such, any complaints against such attorneys should have been filed with the State Bar of California, which provides for procedural protections for the attorneys against whom charges are made. Further, the Rules provide for confidentiality of any and all complaints and information concerning the attorneys to protect the integrity of the Bar and to protect the individual attorney until such complaints or charges are proven to be either true or false. Thus, charges against attorneys at CRLA relating to professional misconduct should have been filed directly with the State Bar of California, and not by airing such charges in public through the press.

Senator **Specter**. Senator Kennedy.

Senator **Kennedy**. Were any of the charges or allegations against any of these attorneys ever upheld?

Mr. **Gnaizda**. None of them, Senator. There were 127. They had 166 witnesses. They had hundreds of documents.

In fact, Mr. Meese and his associates refused to directly support their charges and would not participate in the commission hearings that they originally agreed to have, and eventually began to attack the commission and demanded that the Republican commission be dissolved.

Senator **Kennedy**. Why was that?

Mr. **Gnaizda**. Because they complained that the hearings were being held in public, and that their charges were not being accepted as true. The commission said it would only accept the charges and investigate them. The Reagan administration believed they should not be put to the burden of proving the charges.

Senator **Kennedy**. Mr. Meese has made a lot of the fact that he is for legal services for the poor, but he thinks there's a better way of doing it, than the California Legal Services Corporation or the Legal Service Board. And he says he yields to no one in his strong commitment that there should be legal services, but this is not the way to do it, and he favors a different alternative.

I wonder whether you perceive that Mr. Meese has a realistic alternative Legal Service Program for the poor.

Mr. **Gnaizda**. He raised that at the time he had attacked CRLA. He never, however, sought to consult with any CRLA attorneys. The legal service community, of course, informed him as to why it wouldn't work, in rural areas in particular there would be inadequate attorneys without a conflict of interest. And with the rarest of exceptions, the bar associations throughout California informed him that it wouldn't work, including the State bar, the Sacramento Bar Association, the San Francisco Bar Association, and the Los Angeles Bar Association.

Senator **Kennedy**. They all opposed his program?

Mr. **Gnaizda**. Yes; they believed, one, he was not sincere, and two, it was not workable, although there is, of course, some validity to having more than one method of delivering legal services. But they believed he had no interest in the one that was most cost-effective.

Senator **Kennedy**. Was there any legislation ever introduced to implement his program? Did he followup with this program with the legislature or other groups, or did it just die on the vine?

Mr. **Gnaizda**. He received a very substantial grant which some people viewed as a payoff from Federal OEO when President Nixon overturned Governor Reagan's veto for investigation of a judicare program. Well over $1 million, but nothing came of it.

Senator **Kennedy**. What do you mean he received it?

Mr. **Gnaizda**. Well, they gave it to the Governor's office, to the State OEO which was run by Governor Reagan, to examine alternatives.

Senator **Kennedy**. Does the Hoover Institute at Stanford have files about this particular program?

Mr. **Gnaizda**. Yes; when Mr. Meese was the chief of staff, he kept voluminous files on all matters, and we have attempted to get to the restricted files at the Hoover Institution, which we believe will show the overwhelming impact of Mr. Meese and his unethical attacks on CRLA. But to this date, he has not been willing to provide access to the restricted files.

Senator **Kennedy**. Is it up to him whether you have access or not?

Mr. **Gnaizda**. Yes. He is a trustee. He has——

Senator **Kennedy**. He could give you access if——

Mr. **Gnaizda**. If he wished, or he could give it to the Senate. The only access we have had, and it has helped us in our documentation which is attached to our testimony, is to the public files. But we don't have materials such as the Cabinet meetings, how many times he met with Lewis Uhler, his own comments on the so-called Uhler Report, et cetera.

Senator **Kennedy**. And you have had no opportunity to examine them?

Mr. **Gnaizda**. No; the librarian would not permit it.

Senator **Kennedy**. Thank you very much.

Senator **Specter**. Is Mr. Meese the sole trustee?

Mr. **Gnaizda**. No; there are four trustees. Any one of them may grant permission.

Senator **Specter**. Have the other three trustees refused as well?

Mr. **Gnaizda**. I don't know if they have or not, but Mr. Meese is in the best position to do it.

Senator **Specter**. Well, but was a request made to one of the other trustees?

Mr. **Gnaizda**. No it was not.

Senator **Specter**. Why not?

Mr. **Gnaizda**. It was believed that we, having no access to the other trustees, such as Secretary Clark, that Mr. Meese had the highest self-interest in making those files available.

Mark Paul of the Oakland Tribune made a specific request to Mr. Meese. He informed Mr. Meese—and he informed me that I could inform the Senate of this—that he was examining the very charges I have set forth today. And he wanted Mr. Meese to have an opportunity to refute it, and one way to do it is to demonstrate that in fact he did not play the overwhelming role that we claim he did and did not have the knowledge we claim he did.

Senator **Specter**. Who are the other two trustees besides Mr. Meese and Mr. Clark?

Mr. **Gnaizda**. I don't have their names available.

Senator **Specter**. Was there any reason, anything to prevent requests being made to those other trustees to get this information?

Mr. **Gnaizda**. No.

Senator **Specter**. You say that Mr. Meese filed false reports knowing the reports to be false. Could you give us a couple of illustrations as to what kind of false reports they were, and what your evidence is that Mr. Meese knew them to be false?

Mr. **Gnaizda**. Yes; Mr. Meese, for example, in the charges claimed that CRLA was fomenting violence in the prisons, that it had met with Angela Davis, that it had met with Jackson and the Jackson Six at the Soledad Prison.

Senator **Specter**. Did he make the charge that somebody specifically was fomenting violence in the prison?

Mr. **Gnaizda**. That certain CRLA attorneys were, yes. And many names were given in the course of the charges. The Director of Corrections was ordered not to testify in the matter, although he would have been willing to testify. His name is Ray Procunier. The acting director of the Soledad Prison, however, against the wishes, apparently, of the Reagan administration, did testify, and he testified to the contrary, that CRLA had, of course, not met with Angela Davis or Jackson and that CRLA in its brief encounters at the Soledad Prison had been positive in terms of its relationships, and that he personally appreciated its efforts.

And I confirmed that with him recently.

Senator **Specter**. What is your basis for saying that Mr. Meese knew the charges to be false?

Mr. **Gnaizda**. I give as an example, the testimony of one of his own attorneys, Mr. William Bradford. Mr. Bradford was the attorney, for example, on the 250 farmworkers case, which was one of the bases of the charges. And Mr. Bradford testified that prior to these charges being made public that he had specifically informed the Reagan administration people——

Senator **Specter**. Had he informed Mr. Meese?

Mr. **Gnaizda**. No; but, as I set forth in my testimony, the nexus between that report and Mr. Meese is very close. Mr. Lewis Uhler was hired by Mr. Meese, he was his classmate at Boalt, they were known to be close friends. Mr. Lewis Uhler met frequently with Mr. Meese. Mr. Meese appeared at five press conferences regarding these charges. Mr. Meese issued the press charge against CRLA, went back to Washington on at least two occasions that we can document to meet with OEO on these matters, and Governor Reagan stated that Mr. Meese was his point man in regard to OEO and legal services.

And Mr. Meese also ran a very tight ship when he was the Governor's chief of staff.

Senator SPECTER. Thank you very much for your testimony, Mr. Gnaizda.

We will next hear from Mr. Joseph Trevino on behalf of the League of United Latin American Citizens.

Mr. TREVINO. Thank you, Mr. Chairman.

I'm here on behalf of the league's executive director, Arnoldo Torres, and I wish to express our thanks to the chairman, and distinguished Senators for this opportunity to testify.

I would ask that the full text of my testimony and attachments be incorporated into the committee record.

Senator SPECTER. Without objection, your full statement will appear in the record.

Mr. TREVINO. Thank you.

I will proceed to summarize for the sake of time.

Some of the qualifications which LULAC, the League of United Latin American Citizens feels an Attorney General should have, to mention a couple, are objectivity. It has been mentioned here today earlier that the U.S. Attorney General's position is seen by many, including some of the members of this committee, as the people's lawyer.

Recently, Mr. Meese indicated that the Attorney General in his view is the personal attorney for the President. We would take issue with that, given that the Attorney General has at his disposal so many resources that the average person would not have those resources available to them. At the same time while advocating a personal attorney for the President, Mr. Meese advocates the abolition of Legal Services Corporation, and, as Mr. Gnaizda has attested, the abolition of the California Rural Legal Assistance Program, which I might add was one of the vehicles, as mentioned earlier, that Hispanics in California had looked to as an avenue and vehicle of redressing problems.

Additionally, we would say that another important qualification for the U.S. Attorney General would be exposure to a cross-section of America. We suggest that Mr. Meese has no exposure to a cross-section of America. In fact, throughout the last 3 years, we have been unable to document any one instance where Mr. Meese has been able to meet with any civil rights group, any Hispanics, other than recently, of course, a week ago he met with three representatives of three Hispanic organizations.

Up until that time, no meeting had ever taken place, no meeting had ever been agreed to by Mr. Meese.

Senator SPECTER. Had meetings been requested?

Mr. TREVINO. Meetings had been requested, certainly, over the last 3½ years. Over the last 3 years, Senator.

Senator SPECTER. Could you be specific about the requests?

Mr. TREVINO. Yes, sir; last August, August 24, of 1983, the league issued a preliminary report on Reagan as to the impact his administration has had on Hispanics in America. We had at that time requested a meeting to go over some of the particulars that we were incorporating into our report, but were not given so.

Senator **Specter**. You requested that meeting with Mr. Meese?

Mr. **Trevino**. Yes, sir; our office had requested a meeting with Mr. Meese. We subsequently, through one of our members, were able to obtain a meeting with a representative of Mr. Baker's office, Jim Secone, who has for the last 7 or 8 months given us access to discuss issues we considered to be important.

Additionally, it has been mentioned here that Mr. Meese does have a good record on crime enforcement. We suggest that that is not the only record that this body should look at.

You should look at civil rights enforcement as well as other enforcement components within the Department of Justice and within all regulatory agencies.

I am here today before you to voice our strong opposition to the nomination of Edwin Meese to be Attorney General, and as you have heard today and in previous days, and I'm sure you will continuously hear, that there are many reasons why Mr. Meese's nomination should not be confirmed.

I have only mentioned a couple for the sake of time, and would ask that again this body closely scrutinize some of the allegations and investigate some of the charges that have been made here against Mr. Meese, and would hope that through the deliberation process and the confirmation hearings that it will result with this body rejecting the nomination of Mr. Edwin Meese for Attorney General.

Thank you.

[The statement of Mr. Trevino follows:]

PRESENTED BY

ARNOLDO S. TORRES
NATIONAL EXECUTIVE DIRECTOR
LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC)

MR. CHAIRMAN, DISTINGUISHED MEMBERS OF THE SENATE JUDICIARY COMMITTEE, THANK YOU FOR THIS OPPORTUNITY TO PRESENT THIS TESTIMONY ON BEHALF OF THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) OUR COUNTRY'S OLDEST AND LARGEST NON-PARTISAN HISPANIC MEMBERSHIP ORGANIZATION WITH OVER 110,000 MEMBERS IN 43 STATES, OKINAWA, WEST GERMANY, AND PUERTO RICO. FOR THE RECORD, MY NAME IS ARNOLDO S. TORRES, AND I AM LULAC'S NATIONAL EXECUTIVE DIRECTOR.

I AM HERE BEFORE YOU TO RAISE OUR **STRONG** OPPOSITION TO THE NOMINATION OF MR. EDWIN MEESE TO BE U. S. ATTORNEY GENERAL AND WOULD **URGE** YOU TO REJECT THIS NOMINATION. YOU HAVE HEARD, AND IT IS LIKELY YOU WILL CONTINUE TO HEAR, MANY REASONS WHY MR. MEESE'S NOMINATION SHOULD NOT BE CONFIRMED. PERMIT ME TO FOCUS ON THAT ASPECT OF THE RECORD.

MR. MEESE'S PUBLIC COMMENTS -- WHICH PROVIDE US WITH A WINDOW INTO HIS MIND, AS WELL AS FOCUSING ON SOME DOCUMENTED INSTANCES CALL INTO QUESTION MR. MEESE'S QUALIFICATIONS AS AN ATTORNEY AND THE PROFESSIONAL QUALITIES NECESSARY FOR THE HIGHEST LAW ENFORCEMENT POSITION IN THIS LAND.

PUBLIC COMMENTS

WHILE THE PRESIDENT IS PERPLEXED ABOUT THE ACCOUNTS OF PEOPLE GOING HUNGRY IN THE COUNTRY, MR. MEESE STATES THAT, "[I]T MAY TURN OUT TO BE ALL A FIGMENT OF TV'S IMAGINATION." TIME AUGUST 15, 1983 AT P. 11. WHAT IS NOT A FIGMENT OF ANYONE'S IMAGINATION, INCLUDING MR. MEESE'S, IS THE FACT THAT DURING THIS ADMINISTRATION THERE HAVE BEEN DRASTIC CUTS IN MANY DOMESTIC SUPPORT PROGRAMS, WHICH HAVE RESULTED IN 1 MILLION PEOPLE LOSING ELIGIBILITY FOR FOOD STAMPS, 3.2 MILLION CHILDREN LOSING SCHOOL LUNCHES, AND

475,000 CHILDREN, MOSTLY DISADVANTAGED, LOSING SCHOOL BREAKFAST ACCORDING TO THE FOOD RESEARCH AND ACTION CENTER (F.R.A.C.) FRAC'S FIGURES HAVE BEEN AMPLY DOCUMENTED BY STUDIES OF THE GENERAL ACCOUNTING OFFICE, DEPARTMENT OF AGRICULTURE, U. S. CONFERENCE OF MAYORS, MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH, AND OTHER AUTHORITATIVE GROUPS. THE TRIBUNE, JANUARY 25, 1984 AT B-6

IT IS UNDERSTANDABLE HOW SOMEONE SUCH AS MR. MEESE, WHO HAS "RECEIVED" ON OVER $18,000.00 WORTH OF SUBSIDIZED LUNCHES SINCE THIS ADMINISTRATION TOOK OFFICE, CAN BELIEVE THAT HUNGER IS A FIGMENT OF TV'S IMAGINATION.

IN ESSENCE, MR. MEESE HAS ENJOYED THE EQUIVALENT WORTH OF WHAT IT WOULD COST TO PROVIDE SCHOOL LUNCHES FOR 60 CHILDREN FOR A FULL YEAR.

WHILE WE UNDERSTAND THAT REPORTED PUBLIC COMMENTS DO NOT RISE TO THE LEVEL OF HARD EVIDENCE FROM WHICH ONE COULD REASONABLY CONCLUDE MR. MEESE IS UNQUALIFIED TO BE THE NATION'S CHIEF LAWYER, THEY DO HOWEVER REFLECT AN INTOLERANCE FOR EMPIRICAL FACTS. SUCH INTOLERANCE IN AN ORDINARY POSITION MAY BE ACCEPTABLE, BUT IN THE U. S. ATTORNEY GENERAL THAT WOULD BE INCOMPATIBLE AND DANGEROUS. FURTHER, REVIEWED IN TOTAL THEY AT MINIMUM SUGGEST A PRE-DISPOSITION TO FORSAKE AMERICAN PRINCIPLES AND SENSE OF FAIRNESS IN FAVOR OF PURSUING POLITICAL PREJUDICES. (FOR A MORE DETAILED DISCUSSION ON THIS POINT, I REFER TO MR. GNAIZDA'S TESTIMONY LATER TODAY).

WHERE PUBLIC COMMENTS FAIL, PERSONAL INSIGHTS SUCH AS THESE EXPRESSED BY JOHN MCCLAUGHRY, EXECUTIVE SECRETARY OF THE CABINET COUNCIL ON FOOD AND AGRICULTURE DURING THE FIRST YEAR OF THE REAGAN ADMINISTRATION, SUCCEED. IN DESCRIBING MR. MEESE, JOHN MCCLAUGHRY REVEALS THAT "HIS PRINCIPAL ROLE IS TO RESTATE POLICY POSITIONS WITH SUFFICIENT AMBIGUITY SO THAT ALL . . . PARTIES THINK THEY GOT WHAT THEY WANTED . . ." THE WASHINGTON TIMES, FEBRUARY 28, 1984 AT C-1. MR. MCCLAUGHRY ANSWERS HIS OWN QUESTION AS TO WHETHER MR. MEESE'S OFFICE SHOULD BE LEFT VACANT BY QUOTING LYN NOFZIGER, "LEAVE IT OPEN. THEN WE'LL ALL BE ABLE TO SEE WHO'S RUNNING THE COUNTRY." THE WASHINGTON TIMES. COMMENTS AS REVEALING AS THESE, SHARED BY THESE "INSIDERS" ARE ILLUSTRATIVE OF A CONCIOUS PRACTICE BY MR. MEESE TO PROMOTE AMBIGUITY WHEN

IT BENEFITS HIM OR HIS GOAL. CONSISTENTLY AND THROUGHOUT THIS ADMINISTRATION, MR. MEESE HAS PROMOTED AMBIGUITY WHERE NONE EXISTED AND EXPLOITED IT TO FURTHER HIS POLITICAL PREJUDICES. FOR EXAMPLE, HIS SUPPORT FOR REVERSING THE LONG-STANDING POLICY OF NOT GIVING TAX EXEMPTIONS TO SEGREGATED PRIVATE SCHOOLS AS IN THE BOB JONES CASE. WHILE LULAC DOES NOT AGREE WITH MR. MEESE'S POLITICAL PERCEPTIONS, WE DO RESPECT HIS RIGHT TO THEM. WE DO, HOWEVER, STRONGLY TAKE ISSUE WITH A MAN WHO ASPIRES TO BECOME THIS NATION'S CHIEF LAWYER WHILE SEEKING TO PROMOTE AND ENDORSE SEGREGATION WITH FEDERAL MONIES. THIS ACT ALONE SHOULD BE SUFFICIENT GROUNDS FOR REJECTING MR. MEESE'S NOMINATION.

MR. CHAIRMAN, I NOTE THAT THERE ARE MANY REASONS WHICH ALL THESE WITNESSES OFFER FOR YOUR CONSIDERATION THAT COLLECTIVELY MAY PERSUADE THIS DISTINGUISHED BODY TO REJECT THE NOMINATION BEFORE YOU. HOWEVER, IF ANY OF THESE REASONS, INDIVIDUALLY OR COLLECTIVELY, FAIL TO PERSUADE YOU, THEN I ASK THAT YOU CONSIDER THE TEXT OF A "DEAR COLLEAGUE:" LETTER WHICH ONE OF YOUR COLLEAGUES HAS CIRCULATED. SENATOR HOWARD M. METSENBAUM, "DEAR COLLEAGUE," JANUARY 30, 1984. SENATOR METZENBAUM BRINGS TO YOUR ATTENTION THE RECOMMENDATIONS OF THE WATERGATE SPECIAL PROSECUTION TASK FORCE REPORT OF OCTOBER, 1975, WHICH CONCLUDED THAT:

> THE PRESIDENT SHOULD NOT CONFIRM AS ATTORNEY GENERAL . . . A PERSON WHO HAS SERVED AS THE PRESIDENT CAMPAIGN MANAGER OR IN A SIMILAR HIGH LEVEL CAMPAIGN ROLE.

INCURRED BY SUCH PERSONS ON BEHALF OF THEIR CANDIDATE, SUGGEST THAT THERE COULD WELL BE OFFICIAL ACTIONS TAKEN NOT ON THE BASIS OF APPROPRIATE LEGAL GROUNDS, BUT ON THE BASIS OF THOSE "OBLIGATIONS."

LULAC, IN PURSUIT OF OUR ORGANIZATIONAL RESPONSIBILITY TO MONITOR DEVELOPMENTS AND INFORM OUR MEMBERSHIP, HAS NOT SEEN OR HEARD ANYTHING WHICH COULD DISPEL THE FEAR OF HISTORY REPEATING ITSELF ONCE AGAIN, TWELVE YEARS AFTER WAGERGATE. INDEED, EDITORIALS FROM AROUND THE COUNTRY FOSTER THAT SAME FEAR. FOR EXAMPLE, ONE SUCH EDITORIAL ASKS RHETORICALLY: "FINALLY, CAN WE EXPECT MEESE TO UPHOLD THE LAW WITHOUT REGARD TO POLITICAL INFLUENCE? HIS RECORD AS A CORPORATE FIXER IN THE WHITE HOUSE, ARRANGING special favors for ail and agribusiness interests, for example, suggests otherwise. He even helped set up a $1,000.00 -a- crack 'Presidents Club' to benefit the conservative Heritage Foundation in Washington, D. C. Contributions were promised 'an access to Washington policy makers which cannot be had at any price . . . you will find your membership fee returned to you many times over.' To add insult to injury, this sale of political influence was tax deductable." The Tribune, January 25, 1984 at B-6

Yet another editorial on this same subject of Mr. Meese's nomination argues that ". . . the tension between respect for the rule of law and the need for political accountability in the Justice Department . . . is best resolved by an attorney general with some sophistication about the American system of law and about the need to put principle above expeditionary." The Chicago Tribune, January 24, 1984 at P. 4.

Finally, LULAC asks this body to refrain from making a final determination on this nomination until such time as the Department of Justice, the agency Mr. Meese seeks to head, completes and forwards to Congress the results of an investigation, requested by members of the House Post Office and Civil Services Committee, on the questions concerning the circumstances surrounding the nomination and confirmation of John McKean, Meese's personal accountant, to the U. S. Postal Service Board of Governors.

Thank you.

The Washington Times February 28, 1984

JOHN MCCLAUGHRY

Leave Meese's office vacant

With the imminent departure of presidential counselor Edwin Meese III for the Department of Justice, the cry has gone up among conservatives for the naming of an ideologically acceptable successor Only with a strong conservative at the president's elbow, they say, can there be any hope of recovering what might be left of the Reagan agenda.

As far as I'm concerned, they're wrong, and Ed Meese's office ought to be put to some other more worthwhile use, such as the National Museum of Lost Memos and Abandoned Briefcases. Or for that matter, Lost Hopes and Abandoned Dreams.

It is necessary at the outset to understand clearly why Ed Meese has been essential to the Reagan White House operation. Ronald Reagan does not like detail work. He picks his top staff and Cabinet members, assigns them the responsibility for running his administration, and makes himself available for making a few Really Big Decisions, announcing his policies to the world, and displaying his charm and grace at ceremonial occasions. The one thing he seems to dislike most is being forced to choose among the conflicting views of loyal subordinates.

A typical Reagan directive, following an airing-out of divisive issues in the Cabinet room, is "Can't you fellows go off and try to work something out that you can agree on?" It is extremely rare, if not wholly unknown, for Ronald Reagan, having heard all the arguments, to look up and say "All right. Smith, you win. Jones, you lose. Now let's get on with it."

Since it is so painful for the president to make hard choices among the positions of loyal subordinates, he has organized his staff so that as many conflicts as possible are defused before the result is delivered to him. Enter smooth, friendly, patient, articulate Ed Meese. His principal role is to restate policy positions with sufficient ambiguity so that all the disputing parties think they got what they wanted, or to construct some kind of tit-for-tat package in return for which the disputants agree to postpone their disagreement for the time being. Then the president may safely ratify the result without having to face the hard choices he dislikes so much.

This philosophy pervades the much-vaunted Cabinet Council system by which the administration is said to address important issues. The Cabinet Councils are Ed Meese's creation, and he is an ex officio participant in all of them. The Cabinet Council process provides the opportunity for Ed Meese to display his very real talents, and give the president what he wants, namely, unanimous recommendations.

But a terrible price is paid for this conciliatory process. The policy agenda is in large measure transferred from the Reagan White House to the departments. Instead of informing the departments that the president believes so-and-so, and wants such-and-such done about it unless there is some overpowering reason not to, the Reagan White House has constituted itself as an arbitration forum for disagreements brought up to it by its department heads. The Cabinet Council process creates a mini-legislature, where participants who have no interest in particular issues trade votes to their colleagues in return for future consideration. Since with James Watt's departure no one in the Cabinet resembles a Reagan Believer, the administration's policies in many areas have come to resemble "standard Republicanism" indistinguishable from those of the Ford administration. Thus, in large measure, was the Reagan Revolution lost.

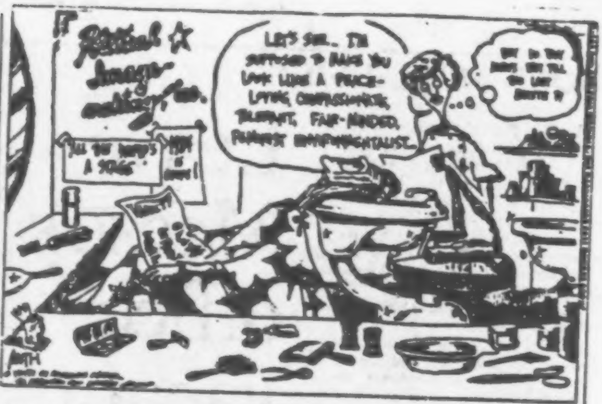
It is not Ed Meese's fault that this pernicious system sprang into being. He developed it because Ronald Reagan wanted it. Since Ed Meese is admirably suited to managing just such a process, it is too much to blame him for failing to see how it destroys any hope of bold policy leadership from a dedicated Reagan White House. But now that he is departing, the real friends of the president would be foolish to beg the president to name a real Reaganaut to take Ed Meese's place.

For if the replacement is a person who really wants to implement the ideas that Ronald Reagan preached over the years, he or she will view this whole decision-making system with horror and disgust, and will thus be precluded from "making it work." The new counselor would be instantly isolated from the machinery of the White House, firmly controlled by Jim Baker. In time, he or she would become an irrelevant anachronism, completely outside the flow

If the replacement is a person like Ed Meese who simply steps into Ed's shoes and carries on, there is no reason for conservatives to want the office filled. Better the White House should be run openly by Jim Baker for all to see. Under those circumstances, with no Ed Meese type to serve as a fig leaf, there would be no illusions about the real locus of power and the defects of the policymaking apparatus.

Lyn Nofziger put it best, as usual "Leave it empty. Then we'll all be able to see who's running the country." Amen.

John McClaughry, executive secretary of the Cabinet Council on Food and Agriculture during the first year of the Reagan administration, was among the first of the Reagan loyalists to leave the White House.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AUTH

omen. Last Wednesday, the White ouse agreed to support key changes in pension rules that will make it easier for women, who often leave and re-enter the job market while raising families, to protect their benefits. One of the participants, Claudine Schneider of Rhode Island, said she was "excited" by the program. But she was upset about a leaked legal brief in which the Justice Department contends that a small Pennsylvania college should be allowed to receive federal student aid funds even though some of its programs 'iscriminate against women. "I feel like . m running a ten-mile race and somebody moved the finish line," she said.

Some White House aides are beginning to believe that the problem with women is perhaps not as bad as it seems. While Reagan's support among women is 10% to 12% less than it is among men, about half of this "gender gap" is due to Reagan's disproportionate popularity with men, according to new White House surveys. Aides assume that 2% of the gap stems from higher Democratic registration among women, leaving only 3% or 4% that can be identified as women specifically dissatisfied with Reagan. Worries one woman staffer in the White House: "All they need to see is that it is less of a political problem and back it goes to the back burner."

In his speech before the bar association, Reagan also tried to improve his image among blacks. He labeled as "hogwash" the charge that he is tampering with the traditional independence of the U.S. Commission on Civil Rights by attempting replace three liberal members with his n appointees. He took credit for proposing amendments to strengthen the Fair Housing Act and for signing in June 1982 the longest extension ever of the Voting Rights Act. "That's the height of fraud," snapped Joaquin Avila of the Mexican American Legal Defense and Educational Fund. "His Administration was at the forefront of seeking to dilute the Voting Rights Act." Critics also noted that Reagan did not mention his lackluster record in naming blacks to positions of responsibility in his Administration.

Block: playing poor

Even in attempting to address the hunger problem, Reagan ran into criticism. In a memo to Counselor Edwin Meese, he noted that he was "perplexed" by accounts that people in the country were going hungry and asked for a "task force to bring me a no-holds-barred study" of the problem. Meese mented sanguinely: "It may turn out ee all a figment of TV's imagination." The panel is expected to be chaired by the dean of U.C.L.A.'s Graduate School of Management, J. Clayburn La Force. Complained Martha Ballou, who coordinated Minnesota's Task Force on Emergency Food and Shelter: "I don't know why the Reagan Administration is so perplexed about the extent of hunger when they have created most of it themselves with the cutbacks in the food-stamp program."

Secretary of Agriculture John Block sought to defend the current level of food stamp funding by showing that a family of four could subsist on a $58 allowance for a week. Surrounded by a flock of aides and reporters, he and his wife pushed a cart through their local supermarket picking up provisions recommended by nutritional experts. The millionaire farmer reported that there were only a few minor hitches in living on this allotment for a week: "The family crisis was when the dog ate the biscuits. But that could happen to any family, rich or poor." Critics countered that tighter eligibility rules instituted by Block mean that the average family of four on food stamps receives only $39 a week, rather than the maximum figure used by Block. The Administration has proposed cutting the funding even more for fiscal 1984. While Block was playing poor, a demonstration that seemed more patronizing than constructive, the House approved 408 to 15 a resolution recommending against any further cuts in food stamp or nutrition programs for at least a year.

Reagan also tried to make the most of symbolic gestures. With great public flourishes he issued proclamations declaring Aug. 26 as Women's Equality Day and the month of August as National Child Support Enforcement Month. Stressing an issue that has been of concern to women's groups, he said, "It's a shocking fact that over half of all women who receive child support orders receive less than what they're due." Faced with inevitable congressional passage of a bill to make Martin Luther King's birthday a national holiday, Reagan swallowed his longstanding objections that this would open the door to many other groups seeking similar holidays and decided that he would support the measure.

One substantive step the Administration took last week was to increase the amount of surplus foods that will be distributed free from the Government's stockpiles. The program to give away cheese had been cut back from a peak of 60 million tons per month to about 30 million tons because of pressure from manufacturers who said it was hurting sales. The amount will now rise to 40 million tons. More butter, powdered milk, corn meal and honey will also be released from federal storage. In addition, the White House is withdrawing its opposition to a bill to provide $50 million next year to help states distribute the food.

The Administration also made an effort to protect the voting rights of blacks last week. It sent 322 federal observers and 1C lawyers to Mississippi to oversee primary elections there. Jesse Jackson, the civil rights leader from Chicago who is considering a race for the presidency, earlier had helped lead a registration drive in that state and had persuaded Assistant Attorney General William Bradford Reynolds to go see for himself the need for more vigorous enforcement of the voting rights laws.

Although Reagan is trying to deal with the political ramifications of the fairness issue, critics feel he has not yet shown a true sensitivity to the needs of minorities and women. "While the President's words are soft as a lamb, his programs bite like a wolf," says Joseph Lowery, head of the Southern Christian Leadership Conference. And a woman in the Administration says, "The President's generation just doesn't understand working women. The men in the White House still think that the appointment of Sandra Day O'Connor to the Supreme Court solves all the women's problems." The larger challenge, which the White House is only beginning to grasp, is the need to ensure that all citizens are full partners in the society. *—By Walter Isaacson. Reported by Douglas Brew and Anne Constable/Washington*

[From The Tribune, Jan. 25, 1984]

The Nation Deserves Better

Home Town Boy Makes Good—that's Ed Meese's story all the way. But what's good for the attorney general-designate bodes ill for the rights and interests of his fellow citizens.

It's hard to quarrel with the credentials of the former Oakland Tribune delivery boy who won a scholarship to Yale University, earned his law degree at Boalt, served as deputy district attorney for Alameda County, taught law at University of San Diego, and was named one of the Outstanding Young Men of America in 1964.

Nor can one quarrel with Meese's contributions to his local community, from his generous support for the East Bay Regional Parks District (where he worked for $2.50 a day clearing trails in 1947), to his leadership in the Ford Foundation's Oakland Interagency Project, a community development program to aid depressed areas of the city.

But his constitutional views, political prejudices, and lapses of personal judgment unfortunately raise the most serious questions about his suitability for office.

President Regan surely has a right to choose cabinet members who share his beliefs and attitudes. But does he fully grasp the political consequences of appointing someone with Meese's record to the sensitive post of attorney general?

Meese first earned his reputation as a conservative hardliner during the successful prosecution of 773 University of California students during the Free Speech Movement sit-in at Sproul Hall in 1964.

Meese allegedly left the law behind in his rush for order. Bob Treuhaft, the veteran "old left" attorney who represented the earliest of Berkeley's new left activists, was the first person arrested at the demonstration—at the personal direction he recalls of Ed Meese himself. Treuhaft had merely been observing the dignity of an overnight stay at Santa Rita prison. He later sued Meese for false arrest, relenting only after the DA's office dropped its charges. "My wife (author Jessica Mitford) never forgave me for dropping the suit," Treuhaft says ruefully. "It might have changed history."

Meese parlayed the Sproul Hall prosecutions into conservative notoriety. In 1966 he told the red-baiting House Un-American Activities Committee that the 800-member Berkeley Vietnam Day Committee, which organized teach-ins and demonstrations against escalation of the war, was "affording aid and comfort to the enemy." He also assigned undercover agents to infiltrate the legal organization.

In 1969 sheriff's deputies killed a man during the People's Park demonstrations in Berkeley. Interviewer Robert Scheer said that Meese later told him that the man "deserved to die."

Such attitudes brought Meese to the attention of Ronald Reagan, who appointed him state legal affairs secretary. He's been one of Reagan's closest advisers ever since.

His attitudes haven't changed—they've only hardened with time. Consider these amazing outbursts over the last three years, since he's been counselor to the president:

"We've had considerable information that people go to soup kitchens because the food is free and that that's easier than paying for it." Meese told an interviewer in December. His spies in the bread lines served him poorly. Far from being "anecdotal stuff," the evidence of hunger has been amply documented by studies of the General Accounting Office, Department of Agriculture, U.S. Conference of Mayors, Massachusetts Department of Public Health, and other authoritative groups.

The American Civil Liberties Union, a private watchdog group dedicated to protecting constitutional rights, is part of a "criminals' lobby" which is "regularly opposed to law enforcement," Meese told a group of California law enforcement officials in 1981. Even the White House disavowed his wild charge. Yet it was fully in character; in 1977 he had denounced the ACLU as a "bargaining agent" for convicts. As ACLU's Ira Glasser noted, much like Sen. Joseph McCarthy who saw communist conspiracies everywhere, "Meese sees criminal conspiracies behind the views he disagrees with."

Government employees who leak classified documents to reporters are guilty of "betraying this country," Meese declared on Meet the Press in 1981. "It's absolutely wrong in my opinion either for anyone to leak classified information and it's just as wrong for a journalist to use that kind of, in effect, stolen property."

While the president's counselor understandably doesn't want to encourage leaks, his rigid, authoritarian stance contradicts basic values of a free and open society, values enshrined by Congress in the Freedom of Information Act.

In 1983 federal officials stamped secret more than 21 million pieces of information, many of which even the government admits were restricted unnecessarily or without authorization. Classification orders have covered everything from summaries of Soviet press commentaries on the 1948 election of President Truman, to embarrassing directives to field commanders in Vietnam to minimize publicity about American air strikes. Leaks of such documents are all that keep officials from hiding negligence or abuse behind a cloak of secrecy.

Meese doesn't just talk; all too often he puts such hard-line attitudes into practice. He spearheaded the administration's drive to slash the Legal Services Corporation budget, arguing instead for tax breaks to private attorneys who supervise third year law students working for the poor. That's hardly a solution to the unmet legal needs of the indigent.

He has pushed vigorously for rolling back the Fourth Amendment by gutting the exclusionary rule, which bars the introduction of evidence seized during an illegal search.

He reportedly outraged other White House staffers by approving a decision at Justice and Treasury to grant tax exempt status to private schools that discriminate on the basis of race—and then tried to deny any part in that decision.

He spearheaded the administration's drive to jail draft registration resisters, then defied a court order to testify in the case of 21-year-old David Wayte, who * * * prosecution.

And he has supported moves to restrict the Freedom of Information Act and to subject more than 100,000 government workers to polygraph tests and lifetime censorship, a program the New York Times rightly called "fantastic."

Beyond Meese's political prejudices lie serious questions about his personal judgment. Regardless of their ideological preferences, members of Congress should explore these matters thoroughly before confirming him as attorney general.

In 1972 Meese came under investigation by state officials for appropriating two government cars intended for field use by undercover law enforcement officers. The Legislature's auditor general, William Merrifield, called it a misuse of government property.

Three members of the House Post Office and Civil Services Committee, citing a General Accounting Office report, recently asked the Justice Department to investigate "questions concerning the circumstances surrounding the nomination and confirmation" of John McKean. Meese's personal accountant, to the U.S. Postal Service Board of Governors. Shortly before the appointment, which Meese arranged, McKean had put together $60,000 in loans to Meese with no collateral.

The circumstances of his promotion to Army Reserve colonel have yet to be fully explained. The Army inspector general uncovered no violation of law following charges of "undue influence" in the promotion, but took administrative action to prevent future abuses.

Finally, can we expect Meese to uphold the law without regard to political influence? His record as a corporate fixer in the White House—arranging special favors for oil and agribusiness interests, for example—suggests otherwise. He even helped set up a $1,000-a-crack "President's Club" to benefit the conservative Heritage Foundation in Washington, D.C. Contributors were promised "an access to Washington policy makers which cannot be had at any price . . . you will find your membership fee returned to you many times over." To add insult to injury, this sale of political influence was tax deductible.

The Republican Senate will no doubt confirm Meese as the new attorney general. And, within limits, the president has a right to the Cabinet of his choice. But Meese's appointment tests those limits uncomfortably. By choosing as the nation's chief law enforcement officer a man of demonstrated insensitivity toward the poor, minorities and the Bill of Rights, President Reagan may get the man he deserves. But the nation deserves better.

HOWARD M. METZENBAUM
OHIO

COMMITTEES:
ENERGY AND NATURAL RESOURCES
JUDICIARY
HUMAN RESOURCES
BUDGET

United States Senate
WASHINGTON, D.C. 20510

1984 FEB -1 PM 4:13

January 30, 1984

Dear Colleague:

In the next few weeks, the Senate will be reviewing the nomination of Edwin Meese to the position of the United States Attorney General. I want to bring to your attention recommendations made by the Watergate Special Prosecutors that have a direct bearing on this nomination. The Watergate Special Prosecution Force Report of October, 1975 concludes that:

> The President should not confirm as Attorney General ... a person who has served as the President's campaign manager or in a similar high-level campaign role.

The report provides incisive reasoning for this conclusion. It observes that:

> A campaign manager seeks support for his candidate and necessarily incurs obligations to political leaders and other individuals throughout wide geographical areas. If he then takes a high position in the Justice Department, he may take -- or appear to take -- official actions on the basis of those commitments rather than on appropriate legal and policy grounds.

The report calls on the Senate to review nominees for the position of Attorney General using "standards of character and independence similar to those they apply to nominees for the Supreme Court."

There are surely many other areas that should be explored at the upcoming confirmation hearings. As we begin this endeavor, however, it may be useful to remember the lessons of the past.

I look forward to working with you on this matter.

Very sincerely yours,

Howard M. Metzenbaum
United States Senator

Chicago Tribune

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14 Section 1 ★★ Tuesday, January 24, 1984

Dangerous attorney general

The appointment of an attorney general is always a dangerous one for a president. The chief prosecutor of the nation, lawyer to the executive branch and supervisor of the Federal Bureau of Investigation can be a formidable problem for the White House if he is a person who wants to go his own way. Or he can be an enormous political asset, if he is so inclined.

And so one measure of a president is how well he overcomes his fears of this position and names to it a person who will do the job with sensitivity for the impersonal, nonpartisan imperatives of the rule of law.

By this measure, President Reagan has failed and failed again.

With the resignation of William French Smith, an old personal friend and a lawyer of narrow though strong credentials, he has nominated as attorney general White House counselor Edwin Meese, an even closer crony with even fewer credentials.

It is a pity, really, that President Reagan feels he needs to trust the personal loyalties of the person in that office more than the professional loyalties of a person who has a proper respect for the office itself. Sure, there are risks in appointing someone of independent stature in the legal community. Such an attorney general might balk at White House political directions when deciding when and if he should bring criminal charges in a controversial case. Such an attorney general might give the president a legal opinion he does not want to hear concerning some matter near to the president's heart.

But the tension between respect for the rule of law and the need for political accountability in the Justice Department, with all its mighty power over individuals and the whole legal order, is best resolved by an attorney general with some sophistication about the American system of law and about the need to put principle above expediency.

This is not an argument for appointing some insufferably self-righteous and combative person to this delicate job. It is an argument against attorneys general whose primary qualifications are their personal friendship and unfailing political allegiance to the president.

The appointment of Mr. Meese can damage the credibility of federal justice and the belief in the essential impartiality of prosecutorial decisions. The legal order can survive great disagreements in successive administrations about the proper shape of legal policy. But it suffers great and lasting damage whenever it is seen to be put in the employ of partisan purposes. And it is hard to see the appointment of Mr. Meese in any other light.

Graceless in defeat

If the Washington Redskins did not exactly acquit themselves nobly in the 38 to 9 Super Bowl drubbing dealt them by the Los Angeles Raiders, they and their fans at least acquitted themselves like Washingtonians.

The nation's capital, after all, is the place where optimism thrives in the face of the harshest reality and where statistics are always what you make of them. It is the place that generates all those presidential candidates who find a way to claim victory in primaries no matter where they finish.

So it came as no surprise when, as the final whistle finally put an end to the agony on the field, Redskins fans in the stadium and back in Washington proudly began chanting, "We're No. 2!"

League of
United Latin
American Citizens

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PRESS RELEASE

"EDBENEZER" MEESE ACCUSED OF HYPOCRISY AND RECEIVING $18,000 IN FREE LUNCHES -- PRESIDENT URGED TO TAKE CHRISTMAS ACTION TO AID THE TRULY NEEDY RATHER THAN THE WEALTHY

The nation's largest Hispanic membership organization, the League of United Latin American Citizens, personally presented a Christmas letter to the President asking him to "repudiate by deeds the 'Edbenezer' Meese spirit". Initial action was requested before Christmas.

Citing "Edbenezer" Meese's unchristian statement that "he has seen no authoritative evidence that there are hungry children in America and that some people who can afford meals go to soup kitchens because the food is free," LULAC charged that:

1) "Edbenezer" Meese deserves the 1983 "Gross Hypocrisy" Award. For example:

a) He has received $18,000 in free lunches since the President took office, or enough to provide school lunches to 60 children for a full school year. (Please see attached letter, p. 1-2 for details.)

b) He has helped create hunger by supporting the $29 billion per year "farmers welfare" program which provides millions to wealthy corporations that grow no food, "steal" billions in needed federal revenue from child nutrition programs and restrict the supply of food thereby raising the price of food to the poor.

c) He has helped create hunger by supporting the President's signing of the November, 1983 $2.7 billion dairy subsidy bill. According to the Wall Street Journal (6/24/83 and 7/21/83), the dairy subsidy has doubled the price of cheese. Were it not for the subsidy, cheese would sell for $1.17 less per pound or under one dollar per pound. This would free the poor from dependency on the humiliating free cheese distributions that Meese generally opposes.

2) Presidential Action

The President is requested to take four bold actions to repudiate the "Edbenezer" Meese spirit. Two of these actions further free market principles.

Firstly, he is requested to issue an order prior to Christmas, that would set in motion a policy to distribute all surplus dairy commodities to the poor. At present, due to opposition from USDA and giant retailers, only one-third of the surplus is distributed.

Secondly, prior to Christmas, he is asked to abolish the Hunger

Commission. Its membership and Executive Director support the "Edbenezer" Meese position on hunger. The Executive Director of the Commission, as well as at least five members, have expressed their preconceived views that there is no hunger in America and appear to share the view of Commission member George Graham. Graham told a Senate Committee in 1982 that "hunger has been sensationalized and that the nutritional status of our people, including low income groups, is very good and continually getting better .... The greatest threat to their [the poor] health lies in overnutrition." The Commission is accused of in fact being a partially Meese-conceived ploy to whitewash the problems of hunger while ignoring the clear impact of government subsidies to the wealthy on the creation of hunger.

Thirdly, the President is asked to take post-Christmas legislative action to once and for all eliminate the $2.7 billion per year dairy subsidy.

The elimination of the dairy subsidy would free up $2.7 billion in essential federal revenue and could be used to restore all cutbacks in federal nutrition programs.

This subsidy, according to the Wall Street Jounal, has made cheese unaffordable to the poor and creates rather than ameliorates hunger.

Fourthly, the President is asked to take post-Christmas legislative action to substantially curtail this nation's largest welfare program, the $29 billion per year "farmers welfare program". This program costs 50% more than all federal nutrition programs whose aggregate cost is only $16 billion. This $29 billion per year "farmers welfare program" is also more than twice the total spent on food stamps.

The "farmers welfare program" this year, for example, provided $2.5 million in "welfare payments" to a corporation (J.G. Boswell) that agreed not to grow wheat on land that was under a lake. This sum could have provided Christmas meals, with all the trimmings, to 500,000 needy.

Upholding The Christmas Spirit By Deeds Not Words

The Christmas letter to the President states that two years ago he "took a tiny step towards resolving hunger by ordering the distribution of surplus cheese. For this Christmas, we urge you to take a giant step towards resolving hunger by taking dramatic free market actions" to eliminate the dairy subsidy and the $29 billion in farmers welfare, over 90% of which goes to wealthy corporate farmers.

Arnold Torres, Executive Director of LULAC, said:

> "All of America is united in opposing hypocrisy by high government officials and in helping the truly needy. Your closest advisor has committed a moral outrage by attacking the poor while accepting expensive free lunches and supporting welfare programs for the wealthy that often double the cost of food to the poor. He has, in effect, helped create the very hunger he denies."
>
> "We do not urge you to seek "Edbenezer" Meese's resignation. Instead, we urge you to take personal responsibility by acknowledging the existence of hunger and to rectify it by the application of the free market principles we have urged, such as the elimination of the $29 billion per year 'farmers welfare program.'"

Senator SPECTER. Thank you very much, Mr. Trevino.

Senator Kennedy.

Senator KENNEDY. I have raised the issue earlier about the numbers of Hispanics in the Federal judiciary and generally throughout the administration.

I was just wondering what your comment would be about the willingness to recognize Hispanic people and their particular needs within this administration.

Mr. TREVINO. Senator, recently, since I think last August, or last July of 1983, we were told in the media that Hispanics had been discovered. We were told on the one hand that the Republican Party and the President in particular was looking toward 30 percent of the Hispanic community to vote in favor of Mr. Reagan. We're told as well while Hispanics are an important part of both parties, we nevertheless find that when time comes for nominating qualified Hispanics to judgeships, or positions in the administrative arena, that certainly have an impact on day-to-day activities of the agency, we're all too often forgotten after elections, and I think that this administration is certainly an example of that once again.

I had the opportunity of testifying on behalf of the league on a nomination that was before this body a couple of weeks ago, but certainly it's not for discussion in this body, but it was mentioned that J. Harvey Wilkinson's nomination came up. We find that all too often we're told that qualified Hispanics and other minorities are not found. I suspect that maybe qualification is now yet another obstacle that has been placed in front of Hispanics and other minorities, but yet the same standard is not applied to non-Hispanics and nonminorities.

Senator KENNEDY. I think that's an interesting point.

Evidently the administration and the bar association are prepared to waive the usual standards for Mr. Wilkinson.

And it could appear that lobbying by some high powered individuals may have had some impact on the bar association's decision. I think what you're mentioning here is there have been qualified Hispanics that have complied with the 12-year requirement, there have been others who would certainly be equal to this nominee but have not been granted the waiver that he has been granted.

Without getting into the merits of that particular nominee, what you are suggesting to us is that we ought to be sensitive to that fact and to inquire of the bar association as well as of the administration as to whether they've been evenhanded in treating various names that come before them.

Mr. **Trevino**. I would hope that certainly some evenhandedness is something which we're able to look back to in these nominations and confirmation hearings.

Ms. **Gonzales**. Senator, may I also make a point in this regard? I think it's particularly important, as you pointed out and as others pointed out previously, that we're not just talking about what this administration has said with regard to judgeships. We're talking about what Mr. Meese has said specifically.

And I think it's important to get from him an answer as to whether he in fact feels that they have not been able to appoint more Hispanics and minorities because there are not enough around who are qualified.

Obviously under the Carter administration there were a number of Hispanics and other minorities, and women, who were appointed, qualified Hispanics and minorities, so that one has to wonder what in fact the new criteria is under Mr. Meese's standards.

Senator **Kennedy**. You're exactly right, and we went over that the other day during the course of the hearing. I thought that the answers he gave were quite unsatisfactory. But I welcome your point at this time because clearly the White House is not just a rubber stamp for a congressional recommendation. Even for the district court. It never has been for the circuit court.

And someone over in the White House is establishing the criteria, signing off on these various individuals, and clearly it is a matter that would come before their Domestic Council, and Mr. Meese is a key member of it. He had some role in it, and that I think should be troublesome to many who have been left out of the judicial system and who have to face it every day in the district courts and circuit courts of this country.

Thank you very much.

Senator **Mathias** [presiding]. Thank you very much for being here. I appreciate your testimony.

The next witnesses will be members of the fifth panel. Steven M. Levinson, National Association of Human Rights Workers; Donna Lenhoff, associate director of the Women's Legal Defense Fund; Frank Chapman, executive director of the National Alliance Against Racist and Political Repression; Fred Wertheimer, president of Common Cause; and Kathy Wilson, chair of the National Women's Political Caucus.

As you know, the procedure in this hearing is that all witnesses who testify must be sworn, so will you all rise?

[The witnesses were sworn.]

Senator **Mathias**. Going from left to right, will you identify yourselves so that the reporter can recognize you as you speak.

Mr. **Wertheimer**. I'm Fred Wertheimer from Common Cause.

Ms. **Wilson**. Kathy Wilson, chair of the National Women's Political Caucus.

Mr. **Chapman**. Frank Chapman.

Ms. **WITHERS.** Claudia Withers, staff attorney at the Women's Legal Defense Fund.

Senator **MATHIAS.** We'll ask that you speak in the same order. Mr. Wertheimer.

STATEMENT OF A PANEL CONSISTING OF FRED WERTHEIMER, PRESIDENT, COMMON CAUSE; KATHY WILSON, CHAIR, NATIONAL WOMEN'S POLITICAL CAUCUS; FRANK CHAPMAN, EXECUTIVE DIRECTOR, NATIONAL ALLIANCE AGAINST RACIST AND POLITICAL REPRESSION; AND CLAUDIA WITHERS, STAFF ATTORNEY, WOMEN'S LEGAL DEFENSE FUND

Mr. **WERTHEIMER.** Thank you, Mr. Chairman, and we appreciate the opportunity to testify. We realize the time periods are short, so I am going to focus on a few areas of my testimony.

We believe that there are a number of important questions that Mr. Meese should fully answer before action is taken on his nomination.

We are not here to take a position at this time on whether or not he should be confirmed.

Obviously some of the questions that have come up were answered when he first testified, but over the course of these panel hearings, I do think that a number of other questions have come up. And we believe that this committee should be comfortable and should be sure that all of the relevant questions are answered by Mr. Meese before any action is taken.

For us that means that if there are any open questions at the end of this, we believe Mr. Meese should be called back and should be asked to testify again. Obviously this is a controversial nomination, with strong views on both sides, and a number of questions are being raised.

I think it would be in everyone's best interest if this process were allowed to play out fully. It's an important role that you are playing.

We urge that the committee does develop a full and a substantive record for the Senate, that the record be in writing, that a report be prepared, and that the Senate and the public have an opportunity to review it again before action is taken by this committee.

Given the stakes, the importance of this position, there is no argument on which haste can be beneficial and quite likely that it would have the reverse effect.

Obviously fair and evenhanded enforcement of our laws is a touchstone of the political system, and that means the issue of keeping politics out of law enforcement is a critical one. The Attorney General should not be a political advisor to the President; the White House should not become involved in the Justice Department's enforcement of our legal system. We have seen that happen in the 1970's with disastrous effects that we're still living with.

Therefore, we believe that Mr. Meese should be asked to submit a complete written statement to this committee on what specific steps he intends to take to make sure that the Department and the Department's attorneys are free from political influence, whether from outside or from a misguided sense of loyalty.

This really should be pinned down, in our view, in writing before the committee acts. We believe that in that statement Mr. Meese should agree that he will not be involved in any party, candidate, or any other political strategy activities while in office, should pledge not to engage in any 1984 election activities, and should, in addition, spell out all the steps that he's prepared to take to make sure that the process of justice, the process of law enforcement, is separated from an appropriate political process which is not appropriate when it comes to most of the activities of the Justice Department.

In 1978, the Department of Justice instituted policy guidelines designed to limit congressional and White House contacts with Justice Department attorneys regarding case matters. Mr. Meese should state for the record whether as Attorney General he would continue these guidelines.

Now, I do know that Mr. Meese has said all contacts from the White House would be handled through the counsel's office. I am frankly not in a position to say what more he has stated about that. I do not think that is a sufficient position when you are looking at the question about what the ground rules are going to be for appropriate versus inappropriate contacts. I go back to the 1978 guidelines of the Justice Department.

We also believe that Mr. Meese should be asked the question whether during the period he served in the White House he has had any contacts, direct or indirect, with anyone in the Justice Department on the subject of ongoing investigations or prosecutions.

And if so, what are the nature of those contacts. We think that question goes to the larger issue of what is going to be the relationship between an Attorney General who has been very close over a number of years, politically, to the President of the United States, who now is being asked to assume a very, very different role.

Senator **MATHIAS**. Mr. Wertheimer, I regret to advise you that your 5 minutes has expired.

Mr. **WERTHEIMER**. Thank you, Mr. Chairman.

Senator **MATHIAS**. We will have some questions for you later. And your full statement will appear in the record. Let me make the same stipulation with regard to the other witnesses: If you do not get to complete your statement, it will appear in the record.

[The statement of Mr. Wertheimer follows:]

TESTIMONY OF

FRED WERTHEIMER
PRESIDENT, COMMON CAUSE

Mr. Chairman and Members of the Committee, I appreciate the opportunity to testify today for Common Cause at the confirmation hearing of Edwin Meese III to be Attorney General.

We would like to begin our testimony with two recommendations:

First, even though all confirmation hearings require careful deliberation, the Committee should give special attention to a nomination to the office of Attorney General.

Second, the Committee should press Mr. Meese to answer -- before his nomination comes to a vote -- certain specific questions concerning what specific steps he will take to ensure that the personal and political loyalties built up in his previous political activities do not interfere with the faithful disinterested discharge of the duties of the Attorney General.

Respect for law is the foundation of a free society. Confidence in the integrity and even-handedness of law-enforcement is essential to democracy. The individual who becomes Attorney General will do more to strengthen or erode the people's confidence in law and justice than any other official. As one senator pointed out at the confirmation hearing of Attorney General William French Smith, the office of Attorney General "is a symbol for millions of Americans for equal justice," and "must inspire trust by all Americans in our legal system and their confidence in the rule of law and evenhanded justice."

The Senate can play a crucial role in insuring public trust in the office of Attorney General. In this respect the confirmation procedure tests our institutions, including the Senate

Judiciary Committee, as much as it tests Mr. Meese. The appointment of an Attorney General is too important to grant confirmation after superficial examination out of party regularity or upon the ground that a President is entitled to his choice. Common Cause urges the Committee therefore to develop a full and substantive record for consideration by the Senate and the public.

This means specifically that the Senate Judiciary Committee must determine as part of these confirmation proceedings what specific steps Edwin Meese will take to ensure that neither politics nor favoritism has or even seems to have any place in the administration of justice. It also means that before the Committee votes Mr. Meese should be brought back to answer any questions not fully answered in the first round. It means preparing a detailed report on the Meese nomination and making it available to Senators and the public in advance of the Senate beginning floor consideration of the nomination.

Mr. Chairman, in order to help the Committee develop a full and substantive hearing record on the nomination, we have set forth those areas of concern that Common Cause believes Mr. Meese should address. We will focus on three essential tasks that would face Mr. Meese as Attorney General:

-- removing politics from the administration of justice;
-- avoiding conflicts of interest;
-- fulfilling public trust in office.

I

Removing Politics from the Administration of Justice

For an Attorney General to build respect for law and confidence in the evenhanded administration of justice for all citizens, he must convincingly demonstrate that neither personal association nor prejudice nor politics can influence him or the

Department of Justice. Policy judgments may have a proper part in some areas, such as antitrust policy, but even such judgments should not enter into the enforcement of the criminal laws, the collection of taxes, and the enforcement of legislation protecting citizens in their civil and constitutional rights. Equally important, recent history -- the Watergate nightmare and the conviction of two Attorneys General -- reminds us that the duties that an Attorney General must perform thoroughly and disinterestedly include the initial investigation and sometimes the prosecution of individuals high in the administration of which he is a part.

These considerations suggest the wisdom of selecting Attorneys General who have not been intimately engaged in political fund-raising, organizing or tactics. At a minimum Common Cause submits that the Attorney General's political activities must stop, whoever he is, while he serves in that office. The Attorney General should not be a political advisor to the President. Mr. Meese should agree not to be involved in party, candidate and other political strategies while in office. Furthermore, Mr. Meese should pledge not to engage in 1984 election activities. These assurances are particularly important in light of Mr. Meese's longstanding political relationship with President Reagan as both campaign director in the 1980 Presidential election and as political advisor in both Sacramento and Washington.

Second, Mr. Meese should be asked to describe what he considers the proper relationship between the President and the Attorney General on matters of policy, on the one hand, and on specific cases, on the other hand. He should also describe the steps that he will take to protect against improper interference from the White House. Working out a proper arrangement that secures the President's ability to establish national priorities in the areas of law enforcement and the administration of justice while barring White House interference with the Justice

Department's job of evenhanded law enforcement is a difficult task, but it is nonetheless essential.

The issue involved here is not simply the relationship between the Attorney General and the President. It also goes to the potential for improprieties down the line, sometimes unintended, if the Attorney General does not provide clear-cut pronouncements and positions.

In 1978 the Department of Justice instituted policy guidelines designed to limit congressional and White House contacts with Justice Department attorneys regarding case matters. Mr. Meese should say whether he as Attorney General would continue these policy guidelines as part of a sustained effort to ensure all department attorneys are free from political influence either from outside or from a misguided sense of loyalty. He should also state what other steps he would take to achieve this goal.

II

Avoiding Conflicts of Interest

The Ethics in Government Act passed by Congress in 1978 demonstrates a deep concern for high ethical standards for public officials. In the provisions requiring public financial disclosure by public employees and appointment of temporary special prosecutors to handle any investigations of alleged misconduct by high level officials, Congress underlined the importance of avoiding conflicts of interest and vigorously prosecuting corruption, violations of constitutional rights, or other abuse of public office.

Commitment to strict enforcement of the Ethics in Government Act has been in question throughout the tenure of the current Administration, with which Mr. Meese has been intimately connected. E. Pendleton James, former Assistant to the President for Presidential Personnel, has called the Ethics in Government Act "a study in overkill." White House Counsel Fred F. Fielding has said "that we have tilted too far in the direction of avoiding the appearance of conflict" and has suggested that financial disclosure be made only to Congressional committees, not to the public.

Yet during the same three years the American public has been left to read press accounts of a host of ethical abuses on the part of Administration appointees with almost no word of White House criticism of their apparent misconduct.

A recent National Journal article chronicles forty incidents involving Administration officials (some before they took office). According to the Wall Street Journal, however, most members of the Administration, including the President, will not even concede that a problem exists. Mr. Meese has been quoted as saying, "You can always have allegations."

Mr. Meese should state his views on the Ethics in Government Act. Would he pledge his full support of the financial disclosure requirements and their enforcement? Will he undertake to oppose efforts to weaken the Act? As Attorney General, how would he enforce the conflict of interest laws?

What are Mr. Meese's views regarding the role and responsibilities of the special prosecutor? Attorney General Smith proposed to repeal these provisions of the law. If the special prosecutor issue came up for reauthorization during his tenure in office, would Mr. Meese oppose reauthorization? Will he appoint special prosecutors as the Act prescribes and assure the Committee that he will support the independence of any special prosecutor from Executive control?

The Attorney General is also responsible for ensuring that he is personally free of conflict of interest and for setting a high standard of personal and professional integrity. Some questions have been raised publicly to which Mr. Meese should be asked to respond. These include the circumstances under which the nominee received a $60,000 unsecured loan from Mr. John McKean, who was later appointed by the President to a $10,000 a year post on the board of governors of the U.S. Postal Service; and his reported role as organizer and general counsel and secretary to a foundation affiliated with a political action committee, both of which were challenged with violating several provisions of the election laws.

Mr. Meese's association with the Heritage Foundation's "President's Club," whose members are promised "access to Washington policy makers" for $1,000 contributions, raises the specter that a nominee for Attorney General believes it is appropriate to provide access to top public officials in return for contributions. Mr. Meese should be asked for his views on this matter.

The Committee should carefully question the nominee on his views of the leadership role of the Attorney General in establishing standards of high personal and professional integrity for public officials. In addition, Mr. Meese's financial disclosure statement should be made part of the printed Committee record.

III

Commitment to Fulfilling Public Trust in Office

As the nation's chief law enforcement officer, the Attorney General must be strongly committed to enforcing the laws of the land. Among Congress' greatest democratic achievements have been the 1965 Voting Rights Act and other civil rights laws which together represent the expressed national commitment to end discrimination and uphold the civil rights of all Americans. In the past three years we have witnessed various efforts by the Administration, with the active participation of Mr. Meese, to weaken or narrow the application of critical pieces of civil rights law.

Mr. Meese, for example, should be asked to describe his views regarding the Administration's attempt to change government policy barring tax breaks for private schools that discriminate, and the Administration's position during the fight over extension of the Voting Rights Act.

In the area of civil liberties and government secrecy, Mr. Meese should give his views on the use of polygraph tests and the imposition of lifetime censorship for public officials who see highly sensitive information. In this connection Mr. Meese should declare what his views are regarding those portions of National Security Decision Directive 84 that were recently suspended.

Regarding enforcement of the Freedom of Information Act, Mr. Meese should be asked whether he would have the Justice Department defend agencies' refusals to release FOIA requests for information, regardless of how harmless that information would be. This policy was maintained by Attorney General Smith. What steps will Mr. Meese take to ensure full implementation of the Freedom of Information Act?

* * * * *

The areas we have focused on involve a series of important issues this Committee needs to raise with Mr. Meese. Other significant areas of inquiry will be developed by other witnesses. It is essential, for example, that the Committee develop fully Mr. Meese's views on the Legal Services Program and the extent of his commitment to the provision of high quality legal assistance for all Americans. The nominee should also describe his participation in the Administration's successful efforts to undermine the independence of the U.S. Civil Rights Commission.

Common Cause urges the Committee to require that Mr. Meese respond to all appropriate questions that have been raised in these hearings before voting on his confirmation. It is essential that the Committee develop a full and substantive hearing record and make public a written report.

In considering this confirmation we again urge the Committee to recognize that the Attorney General has a very special role in our system of government. It is absolutely essential to our political system for citizens to feel confident that our laws are being enforced fairly, impartially and without political motivation.

Thank you.

Senator MATHIAS. Ms. Wilson.

Ms. WILSON. Thank you, Mr. Chairman. Again, I'm Kathy Wilson, and I chair the National Women's Political Caucus, which is a bipartisan organization consisting of 77,000 women who are dedicated to electing progressive Democrats and Republicans to office.

The Attorney General of the United States is supposed to be our Nation's chief law enforcer. He or she is supposed to see that all of our citizens receive the law's protection, that hard won bottom line civil rights gains are upheld, no matter the political winds of the day.

We believe that Edwin Meese the III is not such a person. During his 3 years in the White House he has repeatedly steered the President away from both the spirit and the letter of our civil rights laws. He is a man more interested in bending the law to suit his purposes than enforcing it.

His has always been a guiding, behind-the-scenes force in Reagan's civil rights policies. Were he to take the helm in both title and authority we fear the Department of Justice would become a vanguard for injustice.

As you know, Mr. Meese has succeeded in helping to gut title IX of the 1972 education amendments, and I would like to submit for the record a fact sheet on title IX prepared by the women's equity action league.

Title IX as originally interpreted has significantly helped balance the scales of educational equity, by prohibiting sex discrimination in schools that receive Federal money. I have several examples of the beneficial impact of title IX but in the interest of time I will cite only two.

In 1970, boys outnumbered girls 13 to 1 in innerscholastic sports in secondary schools. In 1980, the difference was less than 2 to 1. Before title IX, no colleges or universities offered athletic scholarships to women. Women's Sports Magazine estimates that today 15,000 college sports scholarships are awarded to women each year. The scholarships enabled many girls who otherwise would not have had the resources to attend college.

The *Grove City* decision sought by Mr. Meese will slow down women's march toward equality in education unless speedily reversed by the Congress.

The Legal Services Corporation has been targeted by Mr. Meese for extinction. Sixty-seven percent of the Corporations clients are women all of whom would be unable to afford legal assistance without this service. No one who believes in justice for all could advocate abolition of legal services for the poor, most of whom are women.

He, too, orchestrated the virtual demise of the U.S. Commission on Civil Rights, a group since its creation a free and independent monitor of the enforcement of civil rights laws.

The Commission publicly criticized and suggested improvements in enforcements efforts of executive agencies during all previous administrations. Only this administration felt the need to silence independent review and criticism.

He has also been an outspoken and influential opponent of affirmative action, even in cases where the courts have diagnosed discrimination and prescribed affirmative action he has turned his back on this important remedy.

The appointment of Mr. Meese will not assure the public that our Nation's laws will be enforced without political or personal bias. I urge that his nomination not be confirmed by the Senate. Thank you, Mr. Chairman.

[The statement of Ms. Wilson follows:]

TESTIMONY OF KATHY WILSON
NATIONAL CHAIR
NATIONAL WOMEN'S POLITICAL CAUCUS
BEFORE THE SENATE JUDICIARY COMMITTEE
MARCH 2, 1984
ON THE
NOMINATION OF EDWIN MEESE III FOR U.S. ATTORNEY GENERAL

The Attorney General of the United States is supposed to be our nation's chief law enforcement officer. He-- or she-- is supposed to see that all of our citizens receive the law's protection, that hard-won, bottom-line civil rights gains are upheld no matter the political winds of the day.

Edwin Meese III is not such a person. During his three years in the White House, Meese has repeatedly steered the president away from both the spirit and the letter of our civil rights laws. This is a man more interested in bending the law to suit his purposes than in enforcing it. His has always been a guiding, behind-the-scenes force in Reagan's civil rights policies; were he to take the helm in both title and authority, the Department of Justice would become a vanguard for injustice.

Meese has succeeded in gutting Title IX of the 1972 Education Amendments. Title IX as originally interpreted has significantly helped balance the scales of educational equity by prohibiting sex discrimination in schools that receive federal money.

For example:

- In 1970, boys outnumbered girls 13 to 1 in interscholastic sports in secondary schools; in 1980, the difference was less than 2 to 1.
- Before Title IX, no colleges or universities offered athletic scholarships to women. Women's Sports magazine estimates that today, 15,000 college sports scholarships are awarded to women each year. Scholarships enabled many girls, who otherwise would not have had the resources, to attend college.
- Since 1972, the percentage of women in vocational education has increased from 51 to 54 percent of total enrollees.
- The nationwide percentage of women enrolled in traditionally male programs has increased from 5 percent in 1972 to 13.9 percent

in 1979. State by state, however, the percentage varied from 23.41 in California to 5.47 in Kentucky, indicating a continued need for strong, uniform enforcement.

- The percentage of women awarded law degress from accredited law schools increased from 7.2 percent in 1972 to 32.9 percent in 1982. The percentages vary by law school from under 10 to over 50.
- The percentage of women awarded medical degress increased from 9 percent in 1972 to 26.7 percent in 1983.

The Grove City decision, sought by Mr. Meese, will slow down women's march toward equality in education unless speedily reversed by the Congress.

The Legal Services Corporation has been targetted by Meese for extinction. Sixty-seven percent of the Corporation's clients are women, all of whom would be unable to afford legal assistance without this service. No one who believes in justice for all could advocate abolition of legal services for the poor, most of whom are women.

Meese, too, orchestrated the virtual demise of the U.S. Commission on Civil Rights, a group which since its creation was a free and independent monitor of the enforcement of civil rights laws. The Commission publicly criticized and suggested improvements in enforcement efforts of executive agencies during all previous administrations. Only this administration felt a need to silence independent review and criticism.

Meese has also been an outspoken and influential opponent of affirmative action. Even in cases where the courts have diagnosed discrimination and prescribed affirmative action, he has turned his back on this important remedy.

The appointment of Mr. Meese will not assure the public that our nation's laws will be enforced without political or personal bias. I urge that his nomination not be confirmed by the Senate.

Senator **Mathias**. Thank you, Ms. Wilson. Mr. Chapman.

Mr. **Chapman**. Thank you, Mr. Chairman, committee members. I am Frank Chapman, executive director of the National Alliance Against Racist and Political Repression.

I want to thank you for allowing me on behalf of our organization to present testimony to your distinguished committee concerning the crucial issue of confirming Mr. Edwin Meese.

The National Alliance Against Racist and Political Repression, founded in 1973, is a coalition of church, community, labor, political, student, and youth organizations concerned with criminal justice, and human rights issues. We are a multiracial, and multinational organization with 36 branches in 28 States, and 70 affiliate organizations nationwide.

We are here to testify today out of our deep concern for freedom and justice for all inhabitants of our country, both citizen and noncitizen, irrespective of race or creed. We are here because we think Mr. Meese's appointment constitutes yet another cruel and heartless act by this administration when it comes to protecting the civil rights of 50 million people of color in our country, women, working people and the poor and the poor and disadvantaged generally.

Therefore, I want to begin by pointing out that we view Mr. Meese's appointment to the office of Attorney General within the context that the Justice Department under this administration has callously abdicated its mandated responsibility to enforce antidiscrimination laws and the Voting Rights Act.

To be sure, I find it rather disturbing that our organization and numerous other civil rights organizations have to come before this committee, which is the congressional overseer of our constitutional liberties, and testify against Mr. Meese's confirmation.

I think it would be much more to the point if we were here testifying about the need for Congress to appoint a special prosecutor to go after those in President Reagan's Cabinet who have shown utter contempt for the laws of this land and the working people of our country.

A Justice Department which will not enforce civil rights laws and is hostile to affirmative action, busing, fair housing, et cetera, ought to be declared in contempt of Congress.

Examples are too numerous to recount here, but we think a few instances will show how the present Justice Department consistently conspires to usurp civil rights laws so as to allow institutionalized discrimination to continue unabated.

I don't want to go through all of the examples, because many of them have already been referred to by people who have testifed before me.

However, there is one particular instance that I do want to mention that I haven't heard mentioned earlier, and that is that in the case in New Orleans, the Equal Employment Opportunity Commission was so outraged by the Justice Department's arguments that they refused to sign on to the brief. And in a letter to Attorney General William French Smith, January 1983—I don't have the exact date—the EEOC charged that contrary to Executive Order 12067, that they as the lead agency were not even consulted.

The EEOC letter denounced the Justice Department's actions as deplorable and then went on to point out that Justice's arguments seriously affected the ability of EEOC to enforce many existing judgments, consent decrees and settlement agreements reached during the last 11 years.

Obviously the purpose of this hearing is not to consider how the present administration has turned our executive branch of Government into a veritable enemy of civil rights, reversing by executive fiat and budget cuts both U.S. Supreme Court decisions and acts of Congress.

But we believe this administration's record is an issue in these hearings because Mr. Meese has been a key shaper of the policies of the Reagan administration. This plus Mr. Meese's own record from his days as deputy district attorney in Alameda County, CA, make it clear that he will continue to implement the anticivil rights policies of the present Justice Department as briefly outlined above.

For the purposes of this hearing, Mr. Chairman, I want to begin by talking about how Mr. Meese distinguished himself in the sixties as a law and order man.

I notice that previously people have said that Mr. Meese is very strong on law and order and against crime in the streets and so forth and so on.

However, his record indicates that the way he began his career was by supervising the arrests of some 700 people involved in the free speech movement at the University of California at Berkeley in 1964.

According to other information that we have, Mr. Meese was also involved in quelling antidraft demonstrators by identifying ring leaders and removing them from the scene. It was not by prosecuting criminals that Mr. Meese distinguished himself, but by arresting demonstrators and it was this particular approach to law and order which made him the darling of those who would stifle dissent in our country.

Senator **Mathias**. Mr. Chapman, I regret that your time has expired, but as I have said, your full statement will appear in the record.

Mr. **Chapman**. Thank you very much.

[The statement of Mr. Chapman follows:]

NATIONAL ALLIANCE AGAINST RACIST & POLITICAL REPRESSION

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March 1 and 2, 1984

TESTIMONY

National Alliance Against
Racist and Political Repression
at the
Confirmation Hearings on Edwin Meese, III
As U.S. Attorney General
before the
Senate Judiciary Committee

Presented by Frank Chapman
Executive Director

Mr. Chairman and Committee members. I am Frank Chapman, Executive Director of the National Alliance Against Racist and Political Repression. Thank you for allowing me, on behalf of our organization, to present testimony to your distinguished Committee concerning the crucial issue of confirming Mr. Edwin Meese, III's appointment by President Reagan to the office of Attorney General of the United States.

The National Alliance Against Racist and Political Repression (NAARPR) founded in 1973, is a coalition of church, community, labor, political student and youth organizations concerned with criminal justice and human rights issues. We are a multi-racial, multinational organization with 36 branches in 28 states and some 70 affiliate organizations nationwide.

Our organization, from its inception, has been not only a strong advocate for civil rights but has worked vigorously in defense of those who are prosecuted and/or persecuted by state or federal authorities for either their political beliefs or their organized efforts to achieve equality and justice under the law.

We are here to testify today out of our deep concern for freedom and justice for all inhabitants of our country, both citizen and non-citizen, irrespective of race or creed. We are here because we think Mr. Meese's appointment constitutes yet another cruel and heartless act by this Administration when it comes to protecting the civil rights of 50 million people of color in our country, women, working people and the poor and disadvantaged generally.

Therefore, I want to begin by pointing out that we view Mr. Meese's appointment to the Office of Attorney General within the context that the Justice Department under this Administration has callously abdicated its mandated responsibility to enforce anti-discrimination laws and the Voting Rights Act.

To be sure, I find it rather disturbing that our organization and numerous other civil rights organizations have to come before this Committee, which is the Congressional overseer of our Constitutional liberties, and testify against Mr. Meese's confirmation. I think it would be much more to the point if we were here testifying about the need for Congress to appoint a special prosecutor, as during Watergate, to go after those in President Reagan's Cabinet who have shown utter contempt for the laws of this land and the working people of our country.

A Justice Department which will not enforce civil rights laws and is hostile to affirmative action, busing, fair housing, etc., ought to be declared in contempt of Congress. Examples are too numerous to recount here, but we think a few instances will show how the present Justice Department consistently conspires to usurp civil rights laws so as to allow institutionalized discrimination to continue unabated.

In the recent affirmative action cases involving the Boston police and firefighters (Beecher) and the New Orleans Police Department (New Orleans) the Justice Department was so out of step with existing Supreme Court decisions, and so bent upon legally subverting the Civil Rights Act, that they were actually chastised by the Court. In fact, in the New Orleans cases, the Justice Department intervened in an attempt to overturn a consent decree, therefore rejecting its own previous positions.

The Equal Employment Opportunity Commission (EEOC) was so outraged by Justice's arguments that they refused to sign on to the brief. In a letter to Attorney General William French Smith, January 1983, EEOC charged that contrary to Executive Order 12067, they (EEOC) as the lead agency were not even consulted. The EEOC letter denounced the Justice Department's actions as "deplorable" and then went on to point out that Justice's arguments "seriously affected the ability of EEOC to enforce many existing judgements, consent decrees and settlement agreements reached during the last 11 years."

Assistant Attorney General William Bradford Reynolds has not only publicly endorsed the concept of "reverse discrimination", which was rejected in the *Bakke* and *Weber* cases by the U.S. Supreme Court, but announced in 1981 that the Justice Department would no longer use fair housing laws to challenge illegal, exclusionary zoning.

Likewise on the question of desegregating our country's schools, 28 years after *Brown v. Board of Education*, the Assistant Attorney General/publicly came out against the Supreme Court's 1973 *Keys* decision when he stated: "We are not going to compel children who do not choose to have integrated education to have one." [*Position Paper On Freedom*, JOBS, PEACE AND FREEDOM, 1201 16th Street, NW, Washington, DC 20036]. Clearly the Justice Department is in contempt of numerous Supreme Court and federal district courts' decisions that busing is the only effective cure for unconstitutional segregation.

Obviously the purpose of this hearing is not to consider how the present Administration has turned our executive branch of government into a veritable enemy of civil rights, reversing by executive fiat and budget cuts both U.S. Supreme Court decisions and Acts of Congress. But we believe this Administration's record is an issue in these hearings because Mr. Meese has been a key shaper of the policies of the Reagan Administration. This plus Mr. Meese's own record from his days as deputy district attorney in Alameda County, California make it clear that he will continue to implement the anti-civil rights policies of the present Justice Department as briefly outlined above.

So let us take a look at Edwin Meese, III's past and present activities in the area of civil and human rights.

For the purposes of this hearing, Mr. Chairman, I want to begin by talking about how Mr. Meese distinguished himself in the sixties as a "law and order" man. In December of 1960, when Edwin Meese, III was deputy district attorney of Alameda County, CA, he supervised the arrest of some 700 persons involved in the "Free Speech Movement" at the University of California, Berkeley.

According to *Current Biography Journal* (1981) Mr. Meese was also involved in quelling anti-draft protesters by identifying "ring leaders" and removing them from the scene. It was not by prosecuting criminals that Mr. Meese distinguished himself, but by arresting demonstrators, and it was this particular approach to "law and order" which made him the darling of those who would stiffle dissent in our country.

Mr. Meese first became part of the Reagan team when Mr. Reagan was elected governor of California in November 1966. Both Reagan and Meese, then as now, were steadfast proponents of capital punishment as a deterrent.

In 1969, when San Francisco State College and the University of California (Berkeley) were the scenes of student civil disobedience, Mr. Meese was dispatched by then Governor Reagan. Meese proceeded to take charge from President S.I. Hayakawa of San Francisco State and ordered the arrest of the leaders of the demonstration. He later confided to Governor Reagan that the Berkeley protest around "Peoples Park" required a state of emergency. Following this evaluation, Reagan ordered in 15,000 National Guardsmen who took over the government of Berkeley and set up road blocks. Meese oversaw this occupation whereby the National Guard closed off 10 blocks and made mass arrests, including shoppers and a mailman making his rounds. Those arrested were taken to Alameda Detention Center and photographed and fingerprinted. This whole operation was executed according to Operation Garden Plot which was prepared by the Justice and Defense Departments for the purpose of putting down civil disturbances around the country.

Of course all of this was consistent with Mr. Meese's outlook regarding civil disturbances. For example, in August 1966, he reported to the House Unamerican Activities Committee on the activities of anti-war student protesters in order to support a bill which vaguely defined "aiding Communist forces" in Vietnam as a crime. Mr. Meese argued: "...basically these demonstrations prolong the war and cost a lot of American lives. The demonstrations encourage the Vietnamese to go on and prevent our elected officials from taking steps to win the war." (See Current Biography Journal 1981).

After Governor Reagan finished his second term with Meese as his Chief of Staff, Meese left public life. From January 1975 to May 1976, he was Vice President of ROHR Industries (aerospace) in Chula Vista, CA. In 1977, he founded and became Executive Director of the Center for Criminal Justice Policy and Management, a right-wing think tank which promoted ideas of preventive detention and capital punishment.

Mr. Meese's public and private career has been long distinguished by his opposition to civil liberties. He once described the ACLU as a "criminals' lobby". (See The Progressive, July 1980). So we are not surprised when we learn that since he has joined President Reagan's Cabinet, Meese placed in key positions individuals who helped him design "civil disturbance contingency plans" during Reagan's governorship of California. As pointed out earlier, these plans called for National Guard take overs of cities and towns.

For example, Herbert Ellingwood, who is currently White House councilor, kept and developed political dossiers on anti-war activists and spearheaded the unsuccessful effort to destroy Rural Legal Assistance groups.

Louie Giuffrida, the head of Federal Emergency Management Agency (FEMA) was brought on board by Meese. Mr. Giufridda worked in the Calfiornia Police Intelligence where he developed an anti-terrorist training program under Meese's guidance. In the 1970 program for National War College, Giuffrida outlined the method for mass internment of Black people, during "civil disturbances", "none of whom" he noted, "is likely to go peacefully." (See The Progressive, July 1980). In an article entitled "Officer Meese" by Jeff Stein printed in the October 7, 1981 issue of The New Republic, we find some interesting revelations. Jeff Stein, a former U.S. army intelligence case officer in Vietnam, maintains that sources in the FBI say Giuffrida and other new FEMA officials have been lobbying the White House and Congress for an "alternative force" to deal with terrorism. These cohorts of Mr. Meese believe that the Secret Service and FBI are "paralyzed with guidelines." The fact that these "guidelines" were made necessary because the FBI and other agencies were violating the Constitutionally protected rights of U.S. citizens is apparently of no import to these master minds of law and order buttressed by repression.

It is also important that we not overlook the role Mr. Meese played in reorganizing the Legal Services Corporation (LSC). You will recall, Mr. Chairman, that in January 1983, while Congress was still in recess, President Reagan appointed four people (Santarelli, McCarthy, Mason and Shapiro) to LSC. They immediately took office without Senate confirmation. Mr. Howard Dana, Jr., who had been nominated for the LSC board but later was withdrawn by the President, alleged that Mr. Meese had a "disasterous right wing vendetta against lawyers who represent poor people." (See The New York Times, January 1983).

Meese's recent statement about hungry people being in soup lines because it's easier than paying for food show his callousness when it comes to the plight of the poor in our country.

But in addition to all this Mr. Meese has gone on public record against abortion rights, for tax-exempt status for private, segregated colleges like Bob Jones University, against U.S. Courts for their "activism" and so on ad nauseum.

We submit that this committee should accept the recommendation from the

Watergate Special Prosecution Force (headed by Archibald Cox). That recommendation spoke to the need to keep the Justice Department independent and that to this end the President should not nominate and the Senate should not confirm as Attorney General or any other appointee in high Department of Justice posts, a person who has served as the President's campaign manager or in a similar high level campaign role. It is public knowledge, Mr. Chairman, that Edwin Meese, III in 1980 was President Reagan's Campaign Chief of Staff, councilor and key political advisor.

In conclusion, we submit that to confirm Mr. Meese's appointment is to say to Blacks and Latinos and all who suffer the oppression of institutionalized racism that our government cannot afford freedom and justice for all its citizens. At a time when we make the hypocritical claim of restoring democracy in Grenada, we are denying to millions of our own citizens not only the most elementary democratic rights but also the right to any semblance of economic security, a healthy environment and the right to live in peace.

This Administration is imposing upon millions of youth the choice between the slow rot of starvation and the hot furnace of war. In this tragic drama not only are our civil and human rights being eliminated but our own government is becoming an outlaw and an oppressor of the people. We cannot continue on this disastrous course and escape the wrath of the people. We demand justice and justice we will get.

End

Ms. WITHERS. Thank you, Senators. My name is Claudia Withers and I'm a staff attorney for the Women's Legal Defense Fund. I will summarize our testimony for the sake of time.

The Women's Legal Defense Fund is a nonprofit organization with over 1,200 members, many of whom are women lawyers. It was formed in 1971 to challenge sex discrimination through litigation, public education and monitoring of public agencies. We are here today to voice our strong opposition to the nomination of Edwin Meese for Attorney General of the United States.

Mr. Meese has exhibited as counsel to the President, an extraordinary insensitivity to virtually every concern that our constituency has. His positions appear to be taken solely on the basis of his own political beliefs and those of Mr. Reagan, regardless of the law as it stands, whether expressed by Congress or by the Supreme Court.

It is for these reasons that we cannot stand by and allow his nomination to go unopposed. The Senate must know before it confirms this nominee that in so doing it can be sounding the death knell for women's rights in this country.

Other witnesses have testified or will testify before this committee on a number of specific issues involving civil rights, women's rights, rights and needs of the poor, the first amendment, and other social issues, about which Mr. Meese's positions are clear.

From the perspective of women, an analysis of Mr. Meese's positions show a downright opposition to the enforcement of women's rights; even on the issues that do not directly involve sex discrimination, these positions reveal a particularly harsh impact on women.

There is no doubt that if Mr. Meese's program is accomplished, women will be left with few substantive rights, and with even fewer effective means of enforcing them.

A number of crucial women's issues will come before the Department of Justice in the coming months. First, it is likely that the Department of Justice will make a decision about what position to take in the celebrated case of *AFSCME* v. *The State of Washington*, in which a Federal district judge for the western district of Washington found that the State had deliberately and unlawfully refused to pay wages for predominantly women's jobs on the same basis that they paid wages for predominantly men's jobs.

Mr. Reynolds has already announced in a public interview that he thinks that decision is wrong, and believes that he will recommend that the Justice Department enter the case on the side of the State.

Mr. Meese's restrictive interpretations of statutes prohibiting discrimination indicate that he would support that recommendation.

Second, the Justice Department has responsibility to coordinate Federal agencies' enforcement of the civil rights laws that prohibit discrimination by recipients of Federal financial assistance, title VI, title IX, and section 504.

In the coming months, the Department will be faced with a number of decisions flowing from the Supreme Court's recent decision in *Grove City*, such as whether and how to revise its regulations under each of these statutes, and whether to support legislation now being introduced to overturn the Supreme Court's misinterpretation of congressional intent.

Mr. Meese's support of the limited *Grove City* reading bodes ill for decisions he would make on these related issues.

Indeed, virtually every administration of justice that comes before the Department of Justice can affect women's rights in particular, and civil rights and civil liberties in general.

Yet, Mr. Meese has built a record of views that are either explicitly or implicitly racist and sexist. If confirmed, Mr. Meese would be in a position to dismantle the legal protections that have taken decades to achieve.

We believe that that record should disqualify him from holding the position of the chief law enforcer in the United States.

Senators, I've left out a couple of other instances, but I would be happy to answer questions about anything you would like.

[The statement of Ms. Withers follows:]

March 5, 1984

STATEMENT OF THE WOMEN'S LEGAL DEFENSE FUND
ON THE NOMINATION OF EDWIN MEESE III
FOR ATTORNEY GENERAL

The Women's Legal Defense Fund opposes the nomination of Edwin Meese for Attorney General of the United States. The Women's Legal Defense Fund is a non-profit organization with over 1200 members, many of whom are women lawyers. It was formed in 1971 to challenge sex discrimination and the institutions that perpetuate it, through litigation, public education, and monitoring of public agencies.

We are here today to voice our strong opposition to the nomination of Edwin Meese for Attorney General of the United States. Mr. Meese has exhibited as counselor to the President, an extraordinary insensitivity to virtually every concern that our constituency -- women and feminist lawyers -- has. His social agenda could not be more at odds with that of those whom we represent. Perhaps even more disturbing is his means of accomplishing his social agenda. His positions appear to be taken solely on the basis of his own political beliefs, and those of Mr. Reagan, regardless of the law as it stands, whether expressed by Congress or by the Supreme Court. It is for these reasons that we cannot stand by and allow his nomination to go unopposed. The Senate must know before it confirms this nominee that in so doing, it could be sounding the death knell for women's rights in this country.

Other witnesses have testified or will testify before this Committee on a number of different issues involving civil rights, women's rights, rights and needs of the poor, the First Amendment, and other social issues, about which Mr. Meese's positions are clear. For example:

- He is opposed to the very existence of the Legal Services Corporation and the thousands of legal services programs throughout the United States.
- He advised the Administration to reverse its long-standing policy and to grant tax-exempt status to schools like Bob Jones University and Goldsboro Christian University, despite the fact that they openly and flagrantly discriminate on the basis of race.

- He advised the President to renege on his agreements regarding the Civil Rights Commission, to fire existing Commissioners, and replace them with Commissioners who hold his view on civil rights and social issues, thereby destroying the independence of the Civil Rights Commission.

- We understand that, in internal policy decisions, he has taken the position that the Administration should argue before the Supreme Court that civil rights laws, such as Title IX of the Education Amendment of 1972, apply only to those specific programs that actually receive federal financial assistance, and not to entire institutions -- in a spectacular reversal of prior administrative positions.

- We also understand that he takes the position that race - or sex-conscious affirmative action goals and timetables may never be used, and supports Assistant Attorney General Brad Reynolds' reversal of prior Justice Department policy in implementing this view whenever the Department of Justice brings an employment discrimination case.

- Again, we understand that in internal policy discussions he strongly favored proposed regulations that would prohibit non-profit recipients of federal grants and contracts from engaging in protected, legitimate activities such as litigation and the filing of amicus briefs; it was reported in several newspapers that he personally met with conservatives, but not with others, on this issue.

- He opposes abortion, and urges at every step that the government do the same, in disregard of the Supreme Court's ruling that establishes women's constitutional right of freedom of choice.

- He has been involved closely in the President's appointments to the bench and to high-level policy-making positions, and the Administration's dismal record of appointments of women and minorities at every level can be laid at his door.

- He would support limitations to statutory authorization of awards of attorney's fees to successful plaintiffs in civil rights cases.

- He opposes the Equal Rights Amendment.

From the perspective of wcemn and advocates of women's rights, analysis of Mr. Meese's positions even on the issues that do not directly involve sex discrimination reveals particularly harsh impact on women. For example:

- The majority of the client population served by the Legal Services Corporation are women -- poor women who have no access to the courts to vindicate their rights without legal services.

- If Bob Jones had been granted a tax-exemption even though it discriminates on the basis of race, there is no question but that institutions that discriminate on the basis of sex would also be granted a tax exemption.

- Affirmative action goals and timetables do not only affect blacks and members of ethnic minorities; these laws apply equally to women.

- Limitations on the advocacy activities that can be undertaken by non-profit organizations that receive federal grants and contracts are direct attacks on those organizations that fight for women's rights in the courts and in the executive agencies.
- Limitations on attorney's fees for civil rights actions have a direct effect on women's ability to assert their rights through the legal process.

Each of these positions has a harmful effect on our goals. Taken together, they indicate a serious hostility to the rights of those who are not middle or upper class, able-bodied white men, and to all legal means for enforcing those rights. There is no doubt that, if Mr. Meese's program is accomplished, women will be left with few substantive rights and with even fewer effective means of enforcing them.

Moreover, the positions that he has taken on these issues foretell the position that he is likely to take on women's issues that will come before the Department of Justice in the coming months. First, it is likely that the Department of Justice will make a decision about what position to take in the celebrated case of AFSCME v. Washington State, in which a federal district judge for the Western District of Washington found that the State of Washington had deliberately and unlawfully refused to pay wages for predominantly women's jobs on the same basis that they paid wages for predominantly men's jobs. Mr. Reynolds has already announced in a public interview that he thinks that decision is wrong and believes that he will recommend that the Justice Department enter the case on the side of the state. Mr. Meese's restrictive interpretations of statutes prohibiting discrimination indicate that he would support that recommendation.

Second, the Justice Department has the responsibility to coordinate federal agencies' enforcement of the civil rights laws that prohibit discrimination by recipients of federal financial assistance (Title VI, Title IX, and Section 504). In the coming months, the Department will be faced with a number of decisions flowing from the Supreme Court's recent decision in Grove City College v. Bell, such as whether and how to revise its regulations under each of these statutes and whether to support legislation being introduced to overturn the Supreme

Court's misinterpretation of Congressional intent. Mr. Meese's support of the limited Grove City reading bodes ill for decisions he would make on these related issues.

Third, a number of issues related to the Department of Labor's federal contract compliance program may well surface in the coming months. The Department has had proposed regulations pending for some time; if adopted, those proposals would greatly reduce the scope and effectiveness of the federal contract compliance program. Our understanding is that the Justice Department will be consulted before these or other regulations are finalized; indeed, rumor has it that Mr. Reynolds' opposition was one of the factors that has prevented them from being published to date. Mr. Reynolds' opposition stemmed from the fact that the regulations continue the requirement of goals and timetables where a federal contractor's own analysis of its workforce indicates a *prima facie* violation of Title VII of the Civil Rights Act, although it substantially limits the circumstances in which such goals and timetables would be required; Mr. Meese's opposition is likely to be along the same lines, and could result in significant negative changes to even those regulations that have been proposed. Moreover, the Justice Department is often called on to defend the federal contract compliance program against challenges by federal contractors, and Mr. Meese's prediliction is likely to be to refuse to defend challenges to OFCCP's authority.

Fourth, the Attorney General's Task Force on Family Violence is scheduled to submit its recommendations in the coming months. These recommendations could have a major influence on public policy and law enforcement about battered women; but Mr. Meese's views on Legal Services raise concerns that the recommendations will not adequately address the needs of battered women for shelter and other services.

Finally, a number of judicial appointments will surely confront Mr. Meese as Attorney General. In the District of Columbia, for example, seven judicial positions have been recently created, and it will fall to the Attorney General to review and recommend nominees. Mr. Meese's dismal record in this area unfortunately predicts how he will approach these and other new judgeships.

Indeed, virtually every issue of administration of justice that comes before the Department of Justice can affect women's rights in particular, and civil rights and civil liberties in general. Yet Mr. Meese has built a record of views that are either explicitly or implicitly racist and sexist. If confirmed, Mr. Meese would be in a position to dismantle the legal protections that have taken decades to achieve. We believe that that record should disqualify him from holding the position of the chief law enforcer in the United States.

Senator **MATHIAS**. Thank you all very much.

First let me turn to Mr. Wertheimer.

Senator **KENNEDY**. Would the Chair yield?

Senator **MATHIAS**. Surely.

Senator **KENNEDY**. Mr. Chairman, just on another matter I would like to indulge our witnesses for a moment, because I think it is important.

In the questioning on the *Bob Jones* decision we put in the record last week the series of events that led up to the reversal of an 11-year-old policy. And the dates were really quite significant and important because we found that in the matter of 3 days the Justice Department reversed its position.

One of the key documents was a Kenneth Cribb memorandum to Mr. Meese. I asked Mr. Meese if he had any objection to having that memorandum made available to the committee for examination. He indicated he had none, but he would confer with the counsel in the White House.

That document could be extremely important for a number of reasons, including the role of Mr. Meese in the policymaking matters which he has indicated were decisions being made by the Justice Department, primarily Mr. Schmultz.

I have just been informed now that this committee will not be granted that document, because it is, I quote, "an internal deliberative document." I'm not sure what that exactly means, whether they're using executive privilege or not.

But that is, or it could be, a very significant and important document.

And it does seem to me that this committee should be entitled to it. And I have stated that I would hope, Mr. Chairman, that we could pursue this further, so that the members of this committee, who have been interested in this particular situation could have a full and complete record about this reversal of a very significant and important policy.

And I intend to pursue this further with other members of the committee and also with the chairman of the committee.

I thank the acting Chair for the time to mention this at this time. I know there is an effort to move this process and this whole hearing on in an expeditious way, and I think there has been no one here in the committee who has desired to delay this process.

But it seems to me that we ought to be able to get the information that we request. And if not, to have a more satisfactory answer than the one that we've been given by the White House on this issue.

Senator MATHIAS. I wonder if the Senator from Massachusetts could be specific. In the transcript from March 2, the Senator from Massachusetts raised the question about the log that has the President's writing. You are familiar with that reference, Trent Lott's request to the Justice Department. You know the date of that particular log. Now, Mr. Meese says, no, sir, I do not. Is it a question of a date?

Senator KENNEDY. There were two requests. One was for the date and the other was for the Ken Cribb memorandum. The White House still has not given us the date of that log.

If the staff has the date, could we put it in the record now?

Mr. SHORT. Yes, sir; it's November 6, 1981.

Senator KENNEDY. All right. The memorandum I was asking for was the Kenneth Cribb December 18 memorandum, that was provided to Mr. Meese.

As the sequence of events show, 3 days prior to that memorandum, Mr. Schmultz and the Justice Department were upholding the previous 11-year-old IRS policy that had been sustained by court decisions.

And within a 3-day period it was reversed, and it was reversed almost in a matter of hours after Mr. Meese was given this memorandum.

Now, the contents of that memorandum we do not know. But clearly it ought to be available to this committee. It may be useful and helpful to us. It may not. But certainly it comes at a very critical and crucial period in decisionmaking and when one of the important issues is the commitment of this candidate to enforcing the laws of this country in the area of racial segregation. It seems to me that we ought to have access to that particular document.

Evidently it was a legal document. I can't understand why such a document would not be available to the committee for examination. I don't want to draw unjustified conclusions of what may or may not be in that document, but it does seem to me to have a very important meaning in terms of the timing for the reversal of a very important and significant decision.

And since it does, I think we ought to have access to it.

Senator MATHIAS. As the Senator knows, the committee has methods by which it can make a formal request for these documents, and I will assume the Senator will renew his request at a time when a quorum is present.

Senator KENNEDY. Fine. I shall.

Senator MATHIAS. Now, Mr. Wertheimer, you have expressed some concern over the question of contacts, outside contacts or White House contacts with the Justice Department over the years. You have been at Common Cause for some years and you are familiar with the guidelines that were adopted in 1978 by Judge Griffin Bell.

I am wondering if that kind of formula would set your mind at ease on the subject of improper contacts?

Mr. **Wertheimer**. I think those guidelines which are still in effect, and one would want to know what Mr. Meese's position is on those guidelines, certainly is an appropriate way of dealing with the contact questions, although the question of how you frame the larger issue of what is appropriate—what are the appropriate relationships between the Attorney General and the President and the Justice Department and the White House is a larger question. It is a difficult question but it is extremely important, I think, to be spelled out.

Senator **Mathias**. Now, on Friday afternoon, Mr. Meese made a pledge. He pledged that he would maintain the log of contacts that was a practice begun by Elliot Richardson and continued by Judge Bell.

Is that a move in the right direction?

Mr. **Wertheimer**. We are in favor of that. We believe that is an appropriate step. But I would go back to the point that given the central nature of this issue, and the long historical relationship involved, that we think it would make sense if there was a statement of the various parts that make up the whole of the view of the nominee as to what is an appropriate practice in order to deal with this issue, the issue of how you balance off the relationships between a Cabinet member and a President, and the very special role that the Justice Department plays in law enforcement.

As you know, we have all seen problems in this area in the past, and it is one to be particularly sensitive to.

Senator **Mathias**. I have some further questions for the panel but my time has expired.

Senator **Kennedy**. Ms. Withers, we do want to move along. I have a number of questions. I know we have another panel and then the Chair has insisted that we continue the hearing to hear some special witnesses that have come in from across the country. I might submit some questions to each member of the panel. But I would like to get your reaction and response to the position that Mr. Meese took last week when I asked him if he did not believe in the concept of equal pay for work of comparable worth, and he would not give us a positive response to that.

I am just wondering what kind of message that sends to millions of women in our society and to others in our society who are concerned about equality under the law, what kind of message does that send to them from a person that could become Attorney General of the United States?

Ms. **Withers**. I think it sends a signal that this administration is not about the business of enforcing the law as it stands for women. I think that particular position, coupled with Mr. Reynolds' public statements about the Washington case, indicate that this particular administration and Mr. Meese, were he to become Attorney General, would not be about correcting the wage gap that women suffer from and the various problems women have with occupational segregation.

Senator **Kennedy**. Could I ask Ms. Wilson?

Ms. **Wilson**. I would certainly echo in agreement. I think, considering Mr. Meese's role in *Grove City,* in the demise of the Civil Rights Commission, I think the fact that, using those roles as examples, I think the fact that he is not commenting does not bode well for our future on this issue.

Senator Kennedy, you asked a couple of questions about percentage appointments in the judiciary. As far as women are concerned, President Carter appointed 50.1 percent women. Reagan, 8.8. Eleven women so far. You may already have that information, but I did get that for you.

Senator **Kennedy**. I appreciate that.

Mr. **Wertheimer**. Could I just ask a clarification on a question I answered before?

When you stated Mr. Meese had said he would keep those same kind of logs, I do not know whether he stated that would be a log open to public inspection, or whether he stated that would be the complete kind of public logs of all meetings that I think Mr. Bell did agree to keep while he served as Attorney General. So I would qualify my comments without knowing the answer to that.

Senator **Mathias**. I would refer you to the transcript for his precise answer, but my recollection was he had made a pledge to keep the same kind of log that Elliot Richardson and Griffin Bell kept in the Justice Department. That was the nature of his pledge.

Mr. **Wertheimer**. Thank you.

Senator **Mathias**. Senator Metzenbaum, do you have questions for this panel?

Senator **Metzenbaum**. No; I do not.

Mr. Chairman, I would like to make an observation. The chairman indicated at the conclusion of this panel he wanted to hear panel 6. I note panel 6 has all Washington-based witnesses. We have brought two witnesses in from across the country. I know the chairman made his position clear but, in spite of that, it seems to me there are some evidentiary facts that ought to be brought out by Mr. Barrack and Mr. McKean yet this afternoon. I wonder if none of these witnesses have any objection, whether they would be willing to defer to our inquiring of Mr. Barrack and Mr. McKean?

Senator **Mathias**. Let me suggest to you, Senator Metzenbaum, that I advised Senator Thurmond of your request and sought his further advice on that subject. We will continue then with a few further questions of this panel.

Ms. Wilson, I take your last exchange with Senator Kennedy to reflect that there are not only good women lawyers, but qualified Republican women lawyers who might be available for appointment.

How would you suggest that the administration improve its record in this respect?

Ms. **Wilson**. Well, let me just say that—to echo an agreement with what you just said, there are now over 70,000 practicing women in this country. So, yes, it is true, it can no longer be said there are not qualified women to serve in the judiciary.

We have submitted recommendations for the judiciary in Michigan and Virginia. We have applicants for every judicial vacancy. It seems to me that this administration should more seriously consider the women applicants, given the disparity in percentage appointments between Jimmy Carter and Ronald Reagan. I think one could draw the conclusion that there is a different criterium for the word "qualification" than there perhaps has been in the past. We have generally not met with the success in appointment in this administration with the same success that we have had in other previous administrations, despite what the administration claims its records on appointments of women is to date. We dispute that record.

Senator MATHIAS. In your statement you reviewed at some length what you felt were Mr. Meese's personal views as you understood them.

The duty of the Attorney General is, of course, to enforce the law, not to enforce his personal philosophy.

Is it your position that Mr. Meese is unable to overcome his own personal predilections and enforce the law as the law is written?

Ms. WILSON. I am afraid so. Judging from his behavior with regard to issues that have been named, the Civil Rights Commission, Legal Services Corporation, and title 9, we know that he was involved, have very good evidence that he was involved in the *Grove City* decision. It seems to me that we have real reason to be concerned about Mr. Meese putting his personal bias ahead of what is really best in terms of our civil rights laws and their enforcement.

Senator MATHIAS. Mr. Chapman, you cited the case of the EEOC's objections to the policies followed by Attorney General William French Smith.

Is it your concern that those policies will be continued in the Justice Department if Mr. Meese is confirmed as Attorney General?

Mr. CHAPMAN. Senator, we did not——

Senator MATHIAS. You did not identify those as the views of Mr. Messe.

Mr. CHAPMAN. I think the record establishes they are the views of Mr. Meese if what I have been hearing for the last few days accurately reflects reality, and I have been here since Thursday. Also I think that the concern that we have is that—and I did not get a chance to get to this in my testimony, it is that this is really and basically fundamentally a political appointment, and given the whole entire history between Mr. Meese and President Reagan, going all the way back to California, there is little reason in my mind that anyone, just applying the normal rules of logic, would doubt that this is a political appointment, and that the Attorney General's office will be compromised by this appointment.

Senator MATHIAS. Ms. Withers, you said that you did not complete your statement.

Were there one or two points that you wanted to make particularly?

Ms. WITHERS. Well, one particular point we wanted to make was the issues related to the Labor Department's Federal Contract Compliance Program. Those regulations have been pending for sometime, and if they were to be adopted, those proposals would greatly reduce the scope of the Federal Contract Compliance Program. We are speaking specifically about the affirmative action regulations.

My understanding is that the Justice Department will be consulted before these regulations are finalized and that Mr. Reynolds has been opposing them, and the reason they have been in limbo is because of this opposition. Mr. Reynolds' opposition stems from the fact that the regulations continue the requirement of goals and timetables. We think that Mr. Meese's opposition would likely be along the same lines and, therefore, that position would result in significant negative changes to even those regulations that have been proposed and, therefore, would be a significant negative factor in the progress of women, and would turn back the clock, as far as women's progress is concerned.

Senator **Mathias**. Thank you very much.

Ms. **Wilson**. Could I ask one question? I have just come in from out of town.

Did Mr. Meese admit to any involvement in the *Grove City* case at all? Just curious. I have not been here.

Senator **Mathias**. I would hesitate to try to answer that since I was not here for every minute of his testimony. I would suggest that we refer to the transcript.

Ms. **Wilson**. May I submit for the record a letter from Secretary Bell to Edwin Meese which states that they have had extensive conversations on *Grove City* and the position that Mr. Meese wished to see stated in the Supreme Court, dated January 11, 1982.

Senator **Metzenbaum**. What did you say? You said you had a letter from whom?

Ms. **Wilson**. There is a letter, dated January 11, 1982, to Edwin Meese from Cabinet Secretary Bell.

Shall I read the first paragraph to you?

Senator **Metzenbaum**. Yes.

Ms. **Wilson** [reading]. "Dear Ed: Since our meeting in your office with Justice Department officials, I have reviewed the matter of changing the method of disbursement of Pell Grants to college students as a means of strengthening our position in the litigation in the *Grove City College* and selected cases that we will be facing. I wanted to report to you on this."

Senator **Mathias**. How is it addressed?

Ms. **Wilson**. How is it addressed?

Senator **Metzenbaum**. Is it addressed——

Ms. **Wilson**. The Honorable Edwin Meese III, Counselor to the President, The White House, Washington, DC.

Senator **Mathias**. Without objection, it will be included in the record.

[The following were received for the record:]

C557C5

THE SECRETARY
WASHINGTON, D.C. 20202

January 11, 1982

The Honorable Edwin Meese, III
Counsellor to the President
The White House
Washington, D.C.

Dear Ed:

Since our meeting in your office with Justice Department officials, I have reviewed the matter of changing the method of disbursement of Pell Grants to college students as a means of strengthening our position in the litigation in the Grove City College and selected cases that we will be facing. I wanted to report to you on this.

There are about 7,000 institutions in the United States that would be affected. To get this massive change to an alternate method of disbursement would require great effort and possibly considerable expenditure. Also, we would be faced with the burden of explaining why the change is being made. For the vast majority of the institutions (both public and private) that have no desire to give up receipt of Federal funds, this proposed change would be resisted because they would not receive any benefit from it and they would lose the administrative allowance but would still have to comply with all Federal rules and reporting requirements.

To make such a change in our procedure to benefit the very few private colleges that want to avoid coming under our civil rights surveillance would not, in my view, be wise at this time. I simply believe that the struggle would be a difficult one at this time when we are working to get legislation passed to dismantle the Department of Education and when we are cutting back drastically on student aid funds as part of our effort to reduce Federal deficits.

This leaves us with the task of pressing ahead in the Grove City litigation to try to win the support of the Third Circuit to come down on our side with respect to our position (arrived at in your office) that institutions that admit only students who are recipients of guaranteed student loans are not recipients of Federal financial assistance and therefore must not meet all the Federal assurances and compliance. We agreed to try to establish this point first.

As I indicated in my previous conversations on this matter, I do not know of any institutions that admit students who are GSL recipients and bar students who receive our Pell Grants. Thus, we will not be meeting the expectations of these institutions. Since they are all aware of the President's statements about this, we must expect an outcry when our Justice Department colleagues appear in the Third Circuit case and they learn that we have not taken the position they have anticipated. I will be hard-pressed on the matter because our friends at Grove City and Hillsdale colleges are all aware of the regulations changes that I approved and sent to Justice for their approval.

It is my own conviction that private colleges that receive no Federal money but do admit students who receive student loans on their own initiative (and not through the college) and who receive the voucher-type Pell Grants from a source not related to the college (as is done in the alternate disbursement system) ought not be required to meet all our rules and reporting requirements associated with recipients of Federal aid. I believe that there is a distinct difference between the private institutions that go after every Federal dollar they can get and those that have made every effort to avoid touching a Federal dollar in any way. Students who pay their tuition to these colleges (that have a strong desire to be totally free of any involvement) are doing so out of their own initiative and under their own private arrangements. I have tried to draw the distinction between campus-based student aid where colleges apply for and receive our funds and then function as our agents in administering our programs and those colleges that have steadfastly refused to get involved in this to the point of sacrificing the financial benefits of Federal aid.

I understand that our strategy is to try to win in the guaranteed student loan matter first--to establish the precedent--and then move from there on the Pell Grant matter. But I am uneasy about the willingness and patience of these private colleges to understand and support our strategy.

I believe that this sensitive matter will ultimately be brought to the attention of the President. I wonder if he needs to be informed of your decision. If he is asked about this issue without being briefed on the details he may respond along the lines of his newspaper column (published prior to November 4, 1980) and then it will appear that we are not carrying out the President's wishes.

Since Justice functions as our "law firm," I have been reluctant to move contrary to their advice. But I am uneasy about where we have left this matter. I have strong convictions on the side of the private institutions and I hope we can press forward to win the ultimate position that will respect their right to remain free of Federal regulations.

If you need to discuss this further or if you have suggestions for me please don't hesitate to call.

Sincerely,

Ted

T. H. Bell

WEAL Facts

Women's Equity Action League
805 15th Street NW, Suite 822, Washington, DC 20005 (202) 638-1961

CONTACT: Jeanne Atkins NOVEMBER 1983

TITLE IX UPDATE

Barely more than a decade after its enactment, the only federal statute prohibiting sex discrimination in education is in danger of being gutted.

Title IX of the Education Amendments of 1972 has been instrumental in achieving greater equality for women in our nation's educational institutions. Since its passage, the percentage of women earning engineering degrees increased from 1 to 12.2%; business and management degrees, from 10% to 31%; the law, from 7% to 40%; dentistry, from 1% to 20%; and medicine, from 9% to 29%. The percentage of women receiving Ph.D.s in all areas rose from 16% to 31%. Women's enrollment in vocational programs also increased dramatically - 60% by 1978. Since Title IX was enacted, participation by women in intercollegiate athletics has increased by 250%. Before Title IX, no college pr university offered athletic scholarships to women. Today, Women's Sports magazine estimates that 15,000 schlarships are awarded to women each year.

However, Title IX's goal to achieve sex equity for students and employees throughout schools receiving federal funds may never be fully realized. The fight for strong enforcement of Title IX has been uphill since its enactment with recent attempts to narrow the effect of the law providing only the most recent challenge. Yet it is clear that Title IX is still essential to the eradication of sex discrimination in education. In 1980, while 30% of all intercollegiate athletes were women, women's athletics programs still received only 16% of the total athletic budget. In each year since 1977, while the numbers of women faculty has increased, the wage gap between men and women faculty members of colleges has grown. During the 1982-83 school year, a faculty woman earned an average of $5,374 less than a faculty man.

Moreover, there is a broad public support for strong federal laws prohibiting sex discrimination in education. An October 1983 poll conducted for the NOW Legal Defense and Education Fund's Project of Equal Education Rights (PEER) found that four out of five Americans support such laws. Therefore, it is essential to carefully monitor the Courts, the Congress, and the Executive Branch to assure the continuing vitality of Title IX.

IN THE COURTS

The Supreme Court is currently considering a significant legal challenge to the authority of the government to enforce Title IX. In Grove City College v. Bell, argued on November 29, 1983, the Court has been asked to resolve a split among the lower courts about whether receipt of federal student aid subjects an educational institution to Title IX obligations -- and, if so, to what extent.

Title IX's language prohibits sex discrimination "under any education program or activity receiving Federal financial assistance." Grove City College argues that when a school accepts no federal grants itself, but only indirectly receives federal money through grants to its students, the Government has no authority to enforce Title IX against that school. Therefore, the College asserts, it need not sign the government's single-page "assurance of compliance" form, which states simply that the college will comply with Title IX.

The Justice Department and women's groups disagree with the College and argue that Title IX does apply to a school whose students receive federal grants. If the Court limits its ruling to whether Grove City College is a recipient of a federal financial assistance - leaving for another day the question of the extent of compliance required by Title IX - Title IX advocates will realize a victory.

However, the Justice Department has joined with Grove City College in advancing the notion of "program specificity," which, if adopted by the Court, will severely limit the scope of Title IX coverage. Under that interpretation, the language "under any education program or activity" means that Title IX covers only the school's particular programs or activities receiving direct federal funding. Therefore, if student aid is the only form of federal assistance received by a school, as is the case at Grove City College, only the operations of the financial aid office would be covered by Title IX. If the Government's argument on the program specificity issue prevails, the school would be free to discriminate in all its other educational programs or activities. Students would be unprotected from sex discrimination for most of their school experience, including admission to classes, participation in athletic and other extracurricular activities, use of school facilities, and application of disciplinary rules.

The Project on the Status and Education of Women estimates that only about 4% of the over $13 billion in federal aid to colleges and universities can be clearly defined as "direct assistance" to a specific program within an educational institution. Yet federal funding of a particular program in a school clearly allows private funds to be freed up for use in other programs. And direct federal grants can include large amounts for overhead - up to 70-80% of the value of the grant - which universities usually place in their general funds for use in any of the school's programs or activities. Thus, practice dictates that Title IX should reach all programs and activities of a school receiving any form of federal financial assistance.

This kind of "program specificity" advanced by the government is contrary to all previous executive and legislative interpretations of Title IX. In fact, in 1975 and 1976, Congress rejected two amendments that would have limited Title IX coverage to only those schools receiving direct federal assistance.

There is also strong public support for a broad interpretation of Title IX. The NOW/PEER poll found that 58% of those questioned would prefer that laws prohibiting sex discrimination in education cover all of a school's educational programs and activities, not just those programs receiving direct federal funding.

Civil Rights groups also fear that an adverse decision in the Grove City case may serve as a precedent for similarly restrictive interpretations of other federal anti-discrimination statutes containing "program or activity" language, such as Title VI of the 1964 Civil Rights Act prohibiting race discrimination in federally-assisted programs, and Section 504 of the 1973 Rehabilitation Act prohibiting similar discrimination against the handicapped.

Neither of the parties to the Grove City case is arguing the longstanding position of both civil rights groups and all previous administrations -- that any federal aid to a school or its students requires the entire institution to comply with Title IX. That interpretation is advanced only in "friend-of-the-court" briefs, including one filed by a bipartisan group of 47 Representatives and three Senators and one by the National Women's Law Center on behalf of WEAL and other women's groups. The Court denied the request of these groups to present oral argument in the case. It is hoped that this denial indicates the Court's intention to limit the issues of the case rather than opposition to a broad interpretation of Title IX.

This conflict was presaged by last term's Supreme Court decision in North Haven Board of Education v. Bell. That case held that Title IX bars sex discrimination against a school's employees as well as its students. As a result of that decision, the Department of Education must now investigate and resolve a backlog of more than 200 employment-related complaints. But the opinion also stated that the government's authority to cut off a college's federal funds is limited to programs or activities which receive federal aid, and that the government's regulations must reflect this limit on their powers. The Court expressly refuse to decide, however, the definition of "federal financial assistance" or "program or activity."

The Circuit Courts have been split on the "program specificity" issue. Whereas the lower court which considered Grove City maintained a broad Title IX interpretation, the Sixth Circuit held in Hillsdale College v. Department of Education that, although federal student aid constitutes federal financial assistance, such aid triggers Title IX obligations in only the school's financial aid program. In Rice v. President and Fellows of Harvard College, the First Circuit held that a plaintiff must establish a "sufficient link" between the discrimination complained of and the federal funding received by the school.

The Justice Department which serves as attorney for the Department of Education did not appeal the Hillsdale decision. Nor did it appeal a Virginia District Court ruling, in University of Richmond v. Bell, that the Department of Education must demonstrate direct financial assistance to the University's Athletics Department before the government could even investigate allegations of sex discrimination in that area.

IN THE LEGISLATURE

The House of Representatives has demonstrated strong bipartisan support for Title IX. On November 16, 1983, the House overwhelmingly (414-8) approved H.Res. 190, introduced by Representative Claudine Schneider (R-RI). The resolution states, ". . . guidelines relating to Title IX . . . should not be repealed or altered in a manner which will deny any person equal access to education." A similar resolution, S. Res. 149, introduced by Senator Dodd (D-CT), is pending in the Senate.

To further counter the Administration's position in Grove City, Representative Schneider organized a bipartisan group of 47 Representatives and 3 Senators to file a friend-of-the-court brief urging the Supreme Court to adopt a broad interpretation of Title IX.

WEAL has been successful in the past in stopping legislative efforts to destroy Title IX. Last year, after a private meeting with WEAL, Senator Orrin Hatch (R-UT) agreed not to push for his bill, S. 1361. That bill would have limited Title IX to programs receiving direct federal funds, removed employment discrimination from Title IX coverage, and eliminated student loans and financial aid from being considered federal aid to a school. Hearings were never held on S. 1361 and no action was taken. No similar bill has been introduced in the 98th Congress.

IN THE EXECUTIVE BRANCH

Previous administrations broadly interpreted Title IX to mean that schools benefitting from federal money in any form must comply with the law's equal opportunity provisions or risk losing federal funds. The current administration's reversal of this position is reflected in the Justice Department's Grove City brief, which maintains that Title IX covers only those specific programs or activities that receive direct federal funding.

The Administration previously tried to attack Title IX on a number of other fronts. The Department of Education only recently removed from its regulatory agenda (for the current fiscal year) its attempt to relax schools' obligations simply by rewriting the Title IX regulations. Proposed changes in the regulations included exempting from Title IX enforcement those schools whose only federal aid comes from student assistance and eliminating the requirement that institutions sign "assurance of compliance" forms. These proposals, however, may resurface in future years.

In addition, Vice President Bush's Task Force on Regulatory Relief targeted for review the athletic policy interpretations of Title IX, which are the guidelines for enforcing Title IX in intercollegiate athletic programs. The Task Force cited its concern with the guidelines' "excessive record-keeping requirements" and mandate for "equal expenditures" for athletic equipment and coaching salaries. In fact, signing the assurance of compliance form is the only paperwork required, and comparable, not equal, expenditures are mandated for both sexes. Once the policy interpretations were reviewed, plans to alter them were dropped.

ENFORCEMENT

The Department of Education's enforcement of Title IX has been spotty at best. In recent investigations of schools with Title IX athletic complaints, the Department's Office for Civil Rights (OCR) has found all universities in compliance with Title IX despite large disparities in opportunities available for male and female athletes.

For example, at the University of Akron, both the Department's findings of fact and its application of the law were flawed. In one instance, the facts indicated that, when both the men's and women's basketball teams play home games, women are always scheduled at the 5:45 p.m. dinner hour, while men are scheduled in the preferred 8:00 p.m. slot when more spectators can be drawn. This was an obvious difference in treatment, affecting the morale of the women's team as well as the revenue-producing potential of women's basketball, and easily remedied with alternate scheduling. However, it was found insufficient to support a finding of less-than-equivalent treatment.

Moreover, even where the Department's conclusions acknowledged inequities, the Akron school was nonetheless determined to be "in compliance" with Title IX. The investigators found that, in 1979-80, women comprised 15% of the school's athletes, but received only 5% of the scholarship budget. Inequities between the men's and women's programs were also documented in: scheduling of practice times; provision of locker rooms and practice and competitive facilities; opportunity to receive coaching; recruitment of student athletes; and effective accomodation of students' interests and abilities. Yet, despite an obligation to provide equal educational opportunity for women since 1972, the school was found "in compliance" with Title IX. This finding was based only on its promise to upgrade substantially its women's scholarship program and athletic program generally within a "reasonable" period of time.

Such a conclusion - that a school is "in compliance" with the law when the findings show that Title IX was violated - may be of questionable legality. Although Title IX's regulations provide for a finding of compliance where a school is already implementing a plan of corrective action, the Letters of Finding issued by OCR do not indicate that any remedial measures were contemplated prior to OCR's review, nor has there been adequate assurance that the Department intends to monitor these schools to see that they follow through with their "plans."

Ineffective enforcement of Title IX and other civil rights laws was the subject of a contempt of court charge that WEAL and other groups brought in March 1982 against OCR and the Department of Labor. Since 1977, OCR has been under a court order known as the WEAL or Adams Order to investigate and resolve complaints of sex, race, and handicap discrimination in a timely manner. Lawyers for WEAL argued before Judge John Pratt of the U.S. District Court of the District of Columbia that, despite Pratt's 1977 order, OCR still missed deadlines for carrying out and completing investigations of complaints about 90% of the time. OCR officials testified that the court-ordered timeframes were too stringent and proposed a severe weakening of the Court's rules, or, alternatively, that no court supervision exist.

Judge Pratt agreed with WEAL and other civil rights groups that court supervision is still needed. He issued a new order in March 1983 which contained specific timeframes for handling complaints and other compliance reviews. The "new" WEAL Order, which the government is appealing, amends the previous order by giving the enforcement agencies extra time to resolve a certain number of difficult cases, but mandates that all investigations must eventually end in a finding of compliance or noncompliance with the law and followed by enforcement proceedings if necessary.

RELATED ADMINISTRATIVE ACTION

The effectiveness of statutes and regulations still on the books is now considerably weakened by substantial reductions in funding for Title IX enforcement activities and for other federal programs to promote equality. Funding for "Title IV" programs which provide states and school districts with the technical assistance they need to comply with laws barring all types of discrimination, has been slashed over the last three years. The Reagan Administration repeatedly proposes zero-funding for the activities conducted under the Women's Educational Equity Act (WEEA), which supports, through grants and contracts to non-profit organizations, the development of new materials and techniques that promote equal education. WEEA's Program Director was recently fired and the program office buried deep in the Education Department's bureaucracy.

Last year, the long-time Executive Director of the National Advisory Council on Women's Educational Programs (NACWEP) was fired on the first morning the new Reagan-appointed council met. The Advisory Council was established under the Women's Education Equity Act in 1974. The 20 members of the council, 17 appointed by the President and 3 ex-officio members, make policy recommendations to the President, Congress, and federal education officials regarding WEEA and all other federal policies and programs affecting women's educational equity at all levels. The new Director of the Council, only months before assuming this position, testified on behalf of the Eagle Forum before a Congressional Committee opposing the very existence of WEEA. She cited WEEA as one example of the "misuse of funds appropriated by Congress which have been squandered in ways you never intended."

FOR MORE INFORMATION ON TITLE IX CONTACT: WEAL
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(202) 638-1961

Jeanne Atkins, Staff Attorney
Written by CARRIE VALIANT

November 1983

Senator **Metzenbaum**. I think that is a very interesting letter.

Ms. **Wilson**. I thought so.

Senator **Mathias**. Thank you all very much for being here.

We will now proceed with panel 6, and in accordance with the understanding we will then go to the financial transaction witnesses.

Senator **Metzenbaum**. Mr. Chairman, may I ask if Mr. Barrack is in the room? Is Mr. Barrack in the room?

Mr. **Short**. It is my understanding that he is in the building.

Senator **Mathias**. Next we have Faith Evans, associate for policy advocacy, United Church of Christ, Office for Church in Society, Washington, DC; Stephen Pollak, Lawyers' Committee for Civil Rights Under Law, Washington, DC, and Craig Biddle III, national director, National Impact, Washington, DC.

You may take seats, in such order as you may choose, and identify yourselves.

As you know, all of the witnesses who appear before this committee will take an oath. So if you are prepared to take the oath, please stand and raise your right hand.

Do you swear in the matter now pending before this committee that you will tell the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF PANEL CONSISTING OF FAITH EVANS, ASSOCIATE FOR POLICY ADVOCACY FOR THE UNITED CHURCH OF CHRIST'S OFFICE FOR CHURCH IN SOCIETY, AND THE COMMISSION FOR RACIAL JUSTICE, UNITED CHURCH OF CHRIST, WASHINGTON, DC; STEPHEN J. POLLAK, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, WASHINGTON, DC; AND CRAIG BIDDLE III, NATIONAL DIRECTOR, IMPACT, WASHINGTON, DC

Mr. **Pollak**. I am Stephen J. Pollak, and I am here as a member of the Lawyers' Committee for Civil Rights Under the Law.

Mr. **Biddle**. I am Craig Biddle, national director of IMPACT.

Mr. **Evans**. I am Faith Evans, and I am here representing two agencies in the United Church of Christ, the Office for Church in Society and the Commission for Racial Justice.

Senator **Mathias**. Mr. Pollak, do you want to lead off?

You have 5 minutes for your oral statements, but your full statements will be incorporated into the record.

Mr. **Pollak**. I am appearing on behalf of some of the members of the Lawyers' Committee for Civil Rights Under Law as identified in our written statement.

Another assistant attorney general for civil rights, Burke Marshall, would be with me but for snow this morning in New Haven.

The Lawyers' Committee was organized in 1963 at the request of President John F. Kennedy in order to bring the resources of the private bar to bear on solving our Nation's civil rights problems. Our members include Democrats and Republicans, liberals and conservatives.

The Lawyers' Committee is committed to two ideals: vigorous civil rights enforcement as a matter of policy, and fidelity to the rule of law.

In the past, the Lawyers' Committee has refrained from commenting on nominations to public office. The committee's focus has been on policies, not people. We members now depart from this long-standing policy.

Under the leadership of the Attorney General, the Justice Department has the primary responsibility for enforcement of the civil rights laws. In a sharp break from the past, the Department has turned away from vigorous enforcement of these laws, and in significant instances failed to enforce the laws as set by Congress and the courts.

The public record, as known to us, is not clear as to Mr. Meese's role in the formulation of this administration's civil rights policies, and his intentions as Attorney General. We, therefore, urge this committee, in considering his nomination, to ascertain the role played by Mr. Meese in the formulation of the key civil rights policies of this administration; and to be certain that as Attorney General Mr. Meese will be committed to vigorous enforcement of these important laws.

In our written statement we identify a number of instances of actions or positions taken by the Department of Justice which call into question its commitment to the protection and enforcement of civil rights.

These defaults include, first, the administration's effort, in the face of contrary court precedent, to grant tax-exempt status to schools that discriminate on the basis of race. The U.S. Supreme Court rejected that effort in *Bob Jones,* declaring that to allow such an exemption violates fundamental public policy.

It has been reported that Mr. Meese played a major role in the adoption of the course taken by the Department. It is appropriate for this committee to inquire into Mr. Meese's role and his commitment to enforce the law in this field.

A second example is this administration's opposition to race conscious remedies to correct the continuing effects of discrimination in employment and public education. This, too, is in dramatic reversal of the position of prior administrations.

The administration's dogmatic opposition to all race conscious remedies is simply wrong—wrong as a matter of law and wrong as a matter of public policy.

The Federal courts developed race conscious remedies in response to the very difficult practical problems involved in redressing and eliminating entrenched racial discrimination. The Department's promise that race discrimination will be redressed and eradicated without resort to such remedies ignores the lessons the courts have taught through experience.

We urge the committee to satisfy itself that Mr. Meese will use all of the tools the courts have fashioned, including, in appropriate circumstances, race conscious remedies.

We of the Lawyers' Committee for Civil Rights Under Law have great respect for the Office of Attorney General and the mission of the Department of Justice to achieve the constitutional mandate of equal rights under the law. To date this administration has unjustifiably rejected important court approved means of achieving this objective.

We urge this committee, through its inquiry into the qualifications of Mr. Meese to be the next Attorney General, to ensure that these court-approved methods will again be utilized in the effective enforcement of the civil rights laws.

Thank you.

[The following was received for the record:]

LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW

SUITE 400 • 1400 EYE STREET, NORTHWEST • WASHINGTON, D.C. 20005 • PHONE (202) 371-1212

CABLE ADDRESS: LAWCIV, WASHINGTON, D.C.

This statement, accompanying the testimony of Burke Marshall and Stephen Pollak, is submitted on behalf of the members of the Board of Trustees of the Lawyers' Committee for Civil Rights Under Law, Co-Chairs of local affiliated Lawyers' Committees, and members of the Executive Committee of the Washington, D.C. Lawyers' Committee who are listed at Appendix A. 1/

The Lawyers' Committee was organized in 1963 at the request of President John F. Kennedy in order to bring the resources of the private bar to bear on solving our nation's civil rights problems.

The Lawyers' Committee is committed to two ideals: vigorous civil rights enforcement as a matter of policy, and fidelity to the rule of law. A whole-hearted commitment to equal justice requires the Attorney General and the Department of Justice to seek to effectuate the civil rights of our people to the maximum extent feasible. In the words of Attorney General Frank Murphy in 1939, when he established a civil rights section, they should provide "aggressive protection of the fundamental rights inherent in a free people."

1/ Because of exigent circumstances, it was not possible to convene the Board of Directors of the Lawyers' Committee, but a draft of this testimony was circulated to all Trustees in order to afford them an opportunity to decide whether to associate themselves with this statement. Appendix A lists those who have notified us by 4:00 p.m. of March 1, 1984 that they have chosen to do so.

In the past, the Lawyers' Committee has refrained from commenting on nominations to public office. The Committee's focus has been on policies, not people and it has left it to others to comment on the fitness of particular nominees, even for positions involving responsibility for civil rights policy and enforcement. The national consensus supporting a vigorous effort to overcome centuries of injustice has been firm and clear, and the record of past Administrations has largely [2/] been favorable to the vigorous promotion of our national commitment to equality and social justice. Herbert Brownell, Jr., a Republican Attorney General, played a vital role in enactment of the Civil Rights Act of 1957, the first civil rights act since Reconstruction, and President Dwight D. Eisenhower sent troops to Little Rock, Arkansas to enforce the rule of law and desegregate the Little Rock schools; Presidents Kennedy and Johnson sponsored the Civil Rights Acts of 1964, 1965 and 1968; President Nixon's administration proposed the Philadelphia plan and supported strengthening Title VII by extending its prohibition on employment

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[2/] The Lawyers' Committee appeared and argued orally in opposition to the position of the Justice Department in _Alexander v. Holmes County Bd. of Ed._, 396 U.S. 19 (1969), and filed a brief _amicus curiae_ opposing the Department's position in the _Bob Jones_ case. See _infra_.

discrimination to state and local governments; and the administrations of Presidents Ford and Carter vigorously enforced these acts, while supporting such legislation as the Institutionalized Persons Act of 1980. It was thus unnecessary for the Lawyers' Committee to take a position on specific nominations.

We are now impelled to break with this long-standing policy of reticence on nominations. The civil rights policies and practices of this Administration constitute so marked a break with those of all Administrations of the last quarter century that we can no longer take for granted that there will be vigorous civil rights enforcement and fidelity to the rule of law.

Our concern is especially great with respect to the Justice Department and the Attorney General. The Attorney General is not just another member of the President's Cabinet. Although he is committed effectively to implement the lawful policies of the Administration of which he is a member, he also has a higher duty: he must vigorously enforce the law, regardless of whether he or the President agrees with it.

The Justice Department has the primary responsibility for civil rights enforcement in the Government. In a sharp break from the past, the current policies and practices of the Department, as led by William French Smith, its departing Attorney General, and William Bradford Reynolds, the Assistant

Attorney General for Civil Rights, have taken directions which do not adequately support the civil rights of minorities and women. Our statement will set these out in some detail.

We are concerned, therefore, about the nomination of a new Attorney General. We are also concerned about the nomination of Mr. Edwin Meese, III, in particular. Mr. Meese has been one of the President's most trusted advisers. Indeed, on matters relating to the Department, to civil rights, and to judicial appointments he may be the primary adviser. There have been reports that Mr. Meese has played a role in specific Administration positions unfavorable to civil rights. The Administration's civil rights policies, and if these reports are accurate, Mr. Meese's involvement in formulating them, are thus cause for concern about the future direction of the Government in the quest to achieve civil rights under law.

We are not now in a position to recommend that Mr. Meese be either confirmed or rejected. The public record, as known to us, is not yet sufficiently clear as to his role in the formulation of this Administration's civil rights policies or his intentions for the future. What we do urge is that before any Member of this Committee votes, he should:

(1) ascertain Mr. Meese's views on the important civil rights issues currently facing our Nation and the Department of Justice;

(2) ascertain the role played by Mr. Meese in the formulation of key civil rights policies of this Administration;

(3) be certain that, as Attorney General, Mr. Meese will --

    (a) comply with the law, as enunciated by the United States Supreme Court and the lower courts; and

    (b) vigorously promote civil rights with respect to all issues in which the Department is or is likely to become involved, whether as litigator, rule maker, adviser, or in other capacity.

We know it is not unusual for presidential appointees to appear before the Senate with no definite views on the responsibilities they are about to assume. We know it is also not unusual for the Senate to confirm such appointees. This appointee, however. is different. Because of the policies of this Administration's Justice Department, the reports of Mr. Meese's involvement in formulating those policies and the uncertainties about Mr. Meese's position, this Committee cannot accept "I have not yet formulated my position on that matter" from Mr. Meese. Instead, the Committee should not vote to confirm unless Mr. Meese is prepared to state clearly and with particularity his position on the issues.

We now turn to the civil rights policies of this Administration and to Mr. Meese's role in their formulation, as we know them. We identify below numerous instances of actions or positions taken by the Department of Justice which call into question its commitment to the protection and enforcement of civil rights. We know a considerable amount about some of these matters. We know less about others; but all have been identified by practitioners in the area as examples of inadequate performance by the Department. There may be room for debate about the positions taken in a few instances. We may be wrong about a few cases. But the overwhelming weight of the examples and the pattern we cite convinces us that there is a serious basis upon which to question the Administration's interest in and dedication to civil rights.

Our concern about this Administration's civil rights policies can be summed up briefly:

1. In some areas, clear and well-established law has been ignored and over-ridden, in violation of the obligation faithfully to execute the law.

2. In some areas, efforts have been made to weaken or change the law in a manner that would impede the progress of minorities and women toward equality under law.

3. In some areas, enforcement of the law has been lax or virtually non-existent.

EDUCATION

A. Tax Exemptions for Discriminatory Schools.

Perhaps the most disquieting instance of this Administration's apparent hostility to civil rights and indifference to the law is its effort to grant tax-exempt status to schools that discriminate on the basis of race. The matter has now been definitively settled by decision of the United States Supreme Court in Bob Jones University v. United States, ___ U.S. ___, 103 S. Ct. 2017 (1983), firmly declaring that to allow such an exemption "violates a fundamental public policy," id. at 2030.

The IRS withdrawal of tax-exempt status to Bob Jones University was based on a consistent agency policy going back to 1971, which was itself based on a three-judge court decision summarily affirmed by the Supreme Court. Green v. Connally, 330 F. Supp. 1150 (D.D.C.), aff'd per curiam, 404 U.S. 997 (1971). When Bob Jones University challenged the IRS decision, the Justice Department originally adopted its traditional stance of supporting agency action, which in this case also promoted civil rights enforcement, and the Fourth Circuit firmly upheld the IRS, 644 F.2d 879 (1981) (per curiam). The Justice Department persuaded the Treasury Department in 1982 to change its position in respect of the tax-exempt status of discriminatory schools, and urged the Supreme Court to dismiss the appeal from the Fourth Circuit ruling, 103 S. Ct. at 2025 n.9. This request to the Court was made over the objections of both the Acting Solicitor General and some top Treasury Department officials. N.Y. Times, Feb. 3, 1982, pp. A1, A2. The Supreme Court refused the Justice Department request, heard the case, and emphatically rejected the Department's position on the merits.

This unfortunate picture of the chief law enforcement agency of the Government defending the right of a school that practices racial discrimination to receive a tax exemption -- in effect, a subsidy from the National Treasury -- bears on Mr. Meese's nomination. It evinces a hostility on the part of this Administration to vigorous civil rights enforcement, an indifference to established law, and an effort to avoid a judicial determination of a challenge to that law. It has been reported several times that Mr. Meese played a major role in the adoption of the course taken by the Department. 3/

3/ An article in the Atlantic Monthly reported that, according to Mr. Meese, "he himself had okayed it without approval from the President." Miller, Ronald Reagan and the Techniques of Deception, Feb. 1984, pp. 63, 64. In March 1982, the National Journal stated that "Meese played a key role in persuading President Reagan to kill a regulation that bars the granting of tax exemptions to racially discriminatory schools." They Make Decisions on Civil Rights Issues, Mar. 27, 1982, p. 540.

This Committee should determine the truth of that report. If it is indeed accurate, it raises serious concerns about Mr. Meese's fitness to be the Attorney General of the United States.

B. School Desegregation.

Methods of achieving the school desegregation mandated in Brown v. Board of Education, 347 U.S. 483 (1954), after years of frustration, were developed in Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189 (1973), Swann v. Charlotte-Mecklenburg Bd. of Ed., 402 U.S. 1 (1971), and Green v. Cty. School Bd. of New Kent County, 391 U.S. 430 (1968).

Each of these cases has been ignored by this Justice Department.

1. Rejection of the Keyes Presumption.

Schools deliberately segregated by race have not existed only in the South but have been common throughout our Nation. In many Northern states, school segregation laws either were not enacted or were abandoned before 1954 when Brown was decided, but segregated schools were created and maintained by more subtle and evasive tactics. These tactics -- as well as the unavailability of older records -- have obviously raised serious proof problems. In many instances, it is no longer possible to find separate evidence of deliberate segregation with respect to every segregated school but only with respect to some. This is particularly true for large urban systems.

To deal with this problem, the Supreme Court in Keyes established a presumption that when deliberate segregation is found in a substantial portion of a school district, it will be presumed that these or similar segregative acts were responsible for the segregation in the rest of the district. "[C]ommon sense dictates the conclusion that racially inspired school board actions have an impact beyond the particular schools that are the subjects of those actions." 413 U.S. at 202.

This Administration has chosen not to employ the Keyes presumption. In 1981 Mr. Reynolds announced to a House of Representatives Committee:

> "In deciding to initiate litigation, we will not rely on the Keyes presumption but will define the violation precisely and seek to limit the remedy only to those schools in which racial imbalance is the product of intentionally segregative acts of school officials." Hearings on School Desegregation before the House of Representatives Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, 97th Cong., 1st Sess., p. 618 (November 19, 1981) (hereinafter "Nov. 1981 Hearings").

This flat repudiation of a clear Supreme Court ruling has had a predictable result: the Department's efforts against school segregation have come to a virtual halt. The Department has initiated only one school desegregation case in its three years in office (Bakersfield), and in that case the findings of discrimination had already been made in 1978 by an administrative law judge.

The Keyes presumption is an indispensable tool for litigating any school segregation case where no statute mandated segregation, and the Department's decision to forego its use clearly manifests an unsympathetic attitude toward its obligations under Brown. It also reflects an indifference to the obligations imposed by the Constitution faithfully to enforce the law.

2. Exclusive Reliance on Voluntary Plans

Over fifteen years ago, and after over thirteen years of unsuccessful attempts at desegregation by voluntary means, a unanimous Supreme Court made it clear that voluntary plans were inadequate to fulfill the promise of equal educational opportunity, and should not be relied upon. Green v. County School Bd. of New Kent County, 391 U.S. 430 (1968). "If there are reasonably available other ways [than voluntary programs] . . . promising speedier and more effective conversion to a unitary, non-racial system, 'freedom of choice' must be held unacceptable." 391 U.S. at 438, 439.

Just three years later, an equally unanimous Court, led by Chief Justice Burger, made it clear that pupil assignment and transportation were "normal and acceptable."

Swann v. Charlotte-Mecklenburg Bd. of Ed., 402 U.S. 1 (1971). And in North Carolina Bd. of Ed. v. Swann, 402 U.S. 43 (1971), a statute barring race-conscious pupil assignment and transportation plans was held unconstitutional by a unanimous Supreme Court because such pupil assignment plans are "essential to fulfillment of . . . school boards' constitutional obligation" to desegregate "and it is unlikely that a truly effective remedy could be devised without continued reliance upon [them]." 402 U.S. at 46.

The Justice Department has simply ignored this clear mandate. "We are not going to compel children who don't choose to have an integrated education to have one," Mr. Reynolds has said, Nov. 1981 Hearings 631, explicitly ignoring the Supreme Court's clear insistence in Swann and North Carolina Bd. of Ed. on mandatory measures, if necessary, for desegregation. Instead, Mr. Reynolds has opted for equal access to resources and staff for segregated students. Nov. 1981 Hearings 632.

The refusal to employ mandatory remedies, even as a last resort, is nothing more than a return to "separate but equal". The recent Bakersfield case illustrates the Department's position. Described by Mr. Reynolds as a "blueprint for desegregation," it was more accurately characterized by the New York Times as a "blueprint for evasion and for continuing the Administration's lax approach to school desegregation." In Bakersfield, which is the only elementary and secondary school desegregation case instituted by this Administration, Mr. Reynolds has agreed to a plan which depends almost entirely on instituting "magnet programs" in four minority schools. No enforcement procedures are prescribed in the event the voluntary methods prove to be ineffective, unlike the plan adopted in Cincinnati on February 16, 1984 which calls for the use of mandatory measures if the voluntary approach fails. When criticized for ignoring the Supreme Court's explicit repudiation of "freedom of choice" plans in Green, Mr. Reynolds reportedly responded that the Bakersfield settlement satisfied constitutional standards because there had been no intentional segregation. N.Y. Times, Feb. 12, 1984, p. 28. But as far back as 1978, an administrative law judge issued a 220-page ruling that black and Hispanic students had indeed been intentionally segregated from whites by deliberate practices that included busing to maintain segregation.

If experience is any guide, the Bakersfield plan is almost certain to fail. According to the Wall Street Journal, a currently operative plan allows for voluntary transfers but so far no white students have opted for it. Jan. 26, 1984, p. 4.

The Department's approach in Bakersfield is not an isolated incident. The Department accepted certain proposals by the Chicago School Board, even though as late as July 1981, before Mr. Reynolds entered the negotiations, the Justice

Department's attorneys had condemned similar proposals as constitutionally questionable. Mr. Reynolds nevertheless accepted these proposals, with the inevitable result: no meaningful desegregation. Indeed, according to one study, 82% of Chicago's black children remain in 100% black schools, and one-sixth of the Hispanic children are in schools averaging 150% of capacity. The number of all-black schools has not only not fallen, but has risen 1% from 59% to 60%. This is a worse record than in almost any other school system.

The centerpiece of the Department's school desegregation policy is a refusal to urge or accede to the use of busing to desegregate schools that were illegally segregated. The Administration may deplore the use of this remedy, but the Attorney General is sworn to enforce the law. And it is the indisputable law of the land that children wrongly denied equal educational opportunity by deliberate segregation are entitled to whatever remedy is necessary to correct that condition. It is equally undisputed that the Supreme Court and the lower courts have ruled that busing must be used where necessary. See, e.g., Swann, North Carolina Bd. of Ed., supra, and Columbus Bd. of Ed. v. Penick, 443 U.S. 449, 468 (1979)(Burger, C.J., concurring). For the Department to forego use or advocacy of this remedy is to deny these children their legal right to an adequate remedy.

The Department has also sought to block a school desegregation settlement in St. Louis even though the local community was agreeable. It has frequently switched sides, supporting school districts like Baton Rouge, Louisiana and Nashville, Tennessee which were resisting remedies previously urged by the Department itself. In Washington v. Seattle School District, 458 U.S. 457 (1982), the Administration reversed the position it had taken as an amicus curiae in the Court of Appeals. It argued in the Supreme Court against the local school district's authority voluntarily to adopt a school desegregation plan. The Supreme Court rejected the Government's new position relying explicitly on its earlier rulings that the Department had disregarded.

The Department has also opposed efforts by black parents to intervene in school desegregation cases, even when the school district itself had no objection.

The Administration states that it is opposed only to mandatory busing and that it supports voluntary desegregation. But it has supported the repeal of the Emergency School Aid Act, which for years provided financial assistance to school districts desegregating voluntarily. It has opposed the settlement in the St. Louis litigation, where the entire community has agreed on a metropolitan school desegregation plan involving only voluntary desegregation. It was necessary for the federal court in Chicago to hold the Department in contempt before the Administration agreed to fund the voluntary plan Mr. Reynolds had praised so effusively in his November 1981 House testimony.

Green, Swann and Keyes are the law. Children asserting a denial of equal educational opportunity are entitled to have the United States Government, which is charged with enforcing the rights of these children, follow these cases to the letter. This Committee must obtain a commitment from Mr. Meese that he will do so, before enabling him to become the Nation's chief law enforcement officer.

HOUSING

Housing discrimination remains one of America's severest problems. A 1979 study by the U.S. Department of Housing and Urban Development found that the probability of a black home-seeker encountering discrimination in a search for housing is 75% in the rental market and 48% in the sales market. 4/ Housing discrimination produces residential and

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4/ U.S. Department of Housing and Urban Development, Office of Policy Development and Research, Measuring Racial Discrimination in American Housing Markets: The Housing Market Practices Survey ES-2 (1979). A similar HUD study of discrimination against Mexican-Americans in the Dallas rental housing market determined that light-skinned Mexican-Americans were subject to a 65% chance of discrimination while dark-skinned Mexican-Americans had a 96% chance of experiencing discrimination in seeking rental housing. U.S. Department of

[Footnote continued]

school segregation and forces minorities into substandard living conditions. Because forms of discrimination are often subtle, and because private administrative and judicial remedies are so cumbersome, vigorous enforcement by the Department of Justice is indispensable.

Under prior Republican and Democratic administrations, the Department played such a role. Between 1969 and mid-1978, when the efforts were largely undertaken under the Nixon and Ford Administrations, the Department brought over 300 cases and 26 enforcement proceedings under the Fair Housing Act of 1968, 42 U.S.C. § 3601ff. It was extremely successful, even though it brought complex and difficult cases: only two cases were lost on the merits.

During this period, the Department developed basic legal enforcement theories, the most important of which were that a plaintiff need only prove "effects" to make a *prima facie* case, 5/ and that a defendant found guilty of discrimination must take affirmative steps to correct the

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4/ [Footnote continued]

Housing and Urban Development, Office of Policy Development and Research, *Discrimination Against Chicanos in the Dallas Housing Market: An Experimental Extension of the Housing Market Practices Survey* (1979).

5/ See, *e.g.*, *U.S. v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975).

effects of past discrimination. The Department was instrumental in persuading every court that dealt with the issue to adopt the "effects" test.

The current Department has brought only nine minor suits since it took office, less than one-tenth the annual rate of 1969-1978 filings, and the lowest enforcement rate since passage of the Act. It has also refused to use the "effects" test, insisting instead on the need to prove intent. In an effort to persuade courts to require proof of a discriminatory intent, an effort so far unsuccessful, it has changed its position in pending cases." 6/

The Department has also abandoned its prior requirement that defendants take affirmative steps to correct the results of housing discrimination, and now asks for little more than a halt to discriminatory practices. 7/

The Committee must know Mr. Meese's position on these fundamental issues, whether he has participated in formulating the Administration's current policies, and whether he intends to continue them.

6/ E.g., U.S. v. City of Birmingham, 538 F. Supp. 819, 827 n.9 (E.D. Mich. 1982).

7/ N.Y. Times, Dec. 20, 1981, p. 4E (Yonkers, N.Y. litigation).

EMPLOYMENT

Centuries of discrimination have left their mark on the workplace. Women still earn less than two-thirds as much as their male counterparts in comparable jobs; the black unemployment rate remains stubbornly over twice that of whites, worse than in 1970, and joblessness among young blacks is three to four times that of young whites. Median black family income is half that of whites; 35.6% of black families are below the poverty line, and the proportion is rising.

Ever since 1969, when the Employment Section of the Civil Rights Division was first established under President Nixon, the Justice Department has instituted or participated in landmark employment discrimination litigation, making vital contributions with respect to both liability and remedy. The policies of this Administration repudiate this effort. Whereas heretofore, "the landmark decisions sustaining the use of numerical goals and timetables as a remedy for past discrimination were either in cases brought by the Civil Rights Division . . . or in which the Division participated as amicus," 8/ the Department has made a 180° reversal.

8/ 1972 Civil Rights Commission Report 277 n.76 (quoting memorandum from Chief of Employment Section). See, *e.g.*, *U.S. v. Local 86, Ironmakers*, 443 F.2d 544 (9th Cir. 1971).

- Assistant Attorney General Reynolds has announced that such remedies will no longer be sought, and he has criticized the Supreme Court's decision in United Steelworkers of America v. Weber, 443 U.S. 193 (1979).

- The Department has insisted that remedies be "color blind", despite clear rulings by both the United States Supreme Court, and every Court of Appeals that has passed on the issue, that color-blindness is ineffective. See, e.g., Vulcan Society v. Civil Service Commission, 490 F.2d 378, 398 (2d Cir. 1973) ("no other method . . . was available for affording appropriate relief.") As Justice Blackmun said in Univ. of Calif. Regents v. Bakke, "In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently." 438 U.S. 265, 407 (1978).

The Department's efforts to reverse this unbroken line of authority have been repudiated by the Courts of Appeals, which have refused to accept its arguments. The Supreme Court has declined to hear cases that the Department has urged it to take in order to get the Court to disapprove these Courts of Appeals' rulings. See, e.g., Bratton v. Detroit, 104 S. Ct. 703 (Jan. 9, 1984) (denial of certiorari).

Because of the Department's narrow approach to remedies, its enforcement efforts have become insignificant. In a suit against Vermont, for example, the Department has settled for insisting merely that the pool of applicants include some women and minorities, regardless of the actual hiring. United States v. Vermont, No. 81-380 (D. Vt. 1981). Remedies for proven discrimination are also to be limited to the few specific victims of the discrimination who can be identified; no goals and timetables for hiring and promotion will even be considered.

The employment cases of the Department also reflect a substantive inconsistency although in all cases the outcome is the same -- the person charging discrimination loses. In Connecticut v. Teal, 457 U.S. 440 (1982), for example, the Department urged that regardless of the discriminatory impact of a job test on an individual employee, the employer should not be found guilty of discrimination if, despite the harm to the individual minority member resulting from the test, the employer had hired a significant number of other minority employees. This hardly reflects a concern for individual as against group rights.

The Department has also sought to limit the remedial efforts of the Office of Federal Contract Compliance Programs and the Equal Employment Opportunity Commission to recruitment and has tried to prevent federal agencies from adopting affirmative action programs for their own operations. It has also succeeded in preventing the EEOC from presenting the Commission's own views (favorable to affirmative action) to the

Court in the New Orleans case, Williams v. New Orleans, No. 82-3435 (5th Cir.); Mr. Meese reportedly was a factor in this latter effort.

The Department's policies and practices with respect to employment discrimination show an indifference to the Justice Department's obligation to enforce the law as laid down by the courts. As Chief Justice Marshall said in Marbury v. Madison, almost 200 years ago, "It is emphatically the province and duty of the judicial department to say what the law is." 1 Cranch 137, 177 (1803). It is just as "emphatically the province and duty" of the Nation's chief law enforcement officer to obey that law, and not to abrogate it unilaterally at the expense of the people whose rights he is mandated by law and his oath of office to enforce.

VOTING

Enforcing the right to vote is central to any civil rights program. It is an area where the Administration presents numerous statistics to show its vigor. These statistics relate primarily, however, to § 5 voting-system changes that must be submitted to the Department by law and upon which the Department must act promptly according to law. These submissions are now particularly voluminous because of redistricting changes resulting from the 1980 census.

The Department has initiated almost no cases on its own. Instead, it seems to have been willing time and again to dilute the law's requirements. For example, it agreed to an annexation of white areas by the City of Jackson, Mississippi, to which it had originally objected because it diluted the black vote. A redistricting plan for Montgomery, Alabama was cleared even though Voting Section lawyers had concluded that the plan intentionally diluted black voting strength; a federal court later rejected the plan after a private suit. In North Carolina, a three-judge federal court invalidated two state legislative districts involving five legislative seats in a plan approved by Mr. Reynolds' division. In Louisiana, New Orleans voting districts were gerrymandered to avoid a majority-black district. Even though the career attorneys objected, Mr. Reynolds approved the plan. When black voters sued, a federal court invalidated the plan as racially discriminatory and unlawful.

In a democracy, no right is more vital than voting. The Department's failings in this area of enforcement weaken our system of government.

JUDICIAL APPOINTMENTS

For too long, minorities and women have been conspicuous by their absence from the Federal judiciary. President Reagan made a very promising start in 1981 with his appointment of Sandra Day O'Connor to the United States Supreme Court. Apart from that, however, this Administration's policies faithfully reflect the view that it need seek out minorities or women for judicial office no longer. On the Court of Appeals level, where the President has an exclusive voice, he has nominated no women at all and only one minority member, elevating District Judge Lawrence Pierce to the Second Circuit Court of Appeals. There are reports that one well-qualified woman considered by this Administration for a Court of Appeals position, Judith Whittaker, was rejected because of pressure by a group opposed to her support for the Equal Rights Amendment. Mann, "Smeared," Washington Post, Jan. 13, 1982, p. B1.

On the district court level, President Reagan has appointed only 10 women out of 93 appointments, and no blacks, though one has just been nominated. Five Hispanic judges have been appointed, of whom three were in Puerto Rico, where Hispanic appointments are traditional. Overall, of 123 judicial appointments, all but 17 have gone to white males. By contrast, during President Carter's first three years, of 133 district court appointees 19 were women, 18 were black and seven were Hispanic; of the 33 appeals court appointees, 10 were women, eight were black and two were Hispanic. Congressional Quarterly, Dec. 3, 1983, p. 2534.

A President has the right to seek candidates for judicial office whose views are compatible with his own. However, the heavy concentration on white males is incompatible with the quest for equality.

Mr. Meese is reported to have played a major role in the process of making judicial appointments. If he were to continue this restrictive pattern as Attorney General, it would not bode well for any effort to make our judiciary more representative of our entire nation, and to change it from what it is today -- an overwhelmingly white male preserve.

LEGAL SERVICES CORPORATION

Mr. Meese's efforts to destroy the Legal Services Corporation reflect a hostility to providing equal access to justice for all our citizens which we think inappropriate in the chief law officer of the Nation. We believe Mr. Meese should not be confirmed unless he indicates a willingness to support the Corporation henceforth.

INSTITUTIONALIZED PERSONS

In 1980, Congress responded to widespread abuses of the rights of persons in state mental health, juvenile and penal institutions by authorizing the Department of Justice to sue these institutions either as plaintiff or as intervenor. Congress found

> uniform agreement among those familiar with institutional environments that thousands of individuals continue to be subjected to conditions and practices flagrantly violative of their most basic human rights. 9/

Shortly thereafter, the Comptroller General found that "unsafe, unsanitary conditions in many state prisons and local jails endanger the health and well-being of inmates, correctional staff, and visitors."

The Department was given the responsibility to sue such institutions because, as this Committee found, "legal services and public interest attorneys lack the financial resources and personnel needed to sustain the protracted litigation required to redress system-wide abuse. In the absence of other available assistance, the only realistic source of hope for the institutionalized lies with the U.S. Attorney General. 10/

Mr. Reynolds apparently does not believe these conditions exist 11/ and as a result, the Department has

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9/ Sen. Rep. No. 96-416, accompanying S. 10, 96th Cong., 2d Sess. (1979), reprinted in 1980 U.S. Code Cong. & Admin. News 787, 800 (1980).

10/ *Id*. at 809.

11/ "Rarely does one find today the kind of blatant, inhumane brutalization of inmates that stands out like a constitutional red flag to even the most casual observer." Remarks before National Governors Conference (Feb. 21, 8982) p. 1.

largely defaulted on its obligations under the Act. Criticizing the courts before the National Governors Conference for being "overly intrusive in ordering relief, [and] mandating detailed requirements to be followed by the states," 12/ he has frequently undercut the line attorneys of the Special Litigation section by excluding them from settlement negotiations. See, e.g., Ruiz v. Estelle, C.A. No. H-78-987 (S.D. Tex.), a major Texas prison case where Mr. Reynolds significantly watered down the relief requested by the Government in numerous ways. 13/ He has refused to act against

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12/ Id. at 4-5.

13/ Mr. Reynolds proposed the following changes:

> In three areas we have determined that the remedial order exceeded proper bounds:
>
> (1) too overly specific requirements governing the manner of relieving overcrowding. . .;
>
> (2) an improper delegation of authority allowing the Special Master to modify the staffing patterns ordered by the court. . .;
>
> (3) provisions limiting the size, structure and location of prison units.

And he supported the State of Texas' argument

> that the district court's order in this regard went further than was necessary to

[Footnote continued]

racial segregation in a North Carolina prison, abuse of mentally retarded people in Missouri, and of emotionally disturbed children in Idaho. A case against a mental retardation facility in Alabama was settled by Mr. Reynolds on terms so generous to the State that the trial attorney refused to sign the settlement, and in a case involving mentally retarded children in Louisiana, he ordered Department attorneys to reject as too stringent remedies that the State had itself agreed to. Gary W. v. Louisiana, C.A. No. 74-2412 "C" (E.D.La.). In a Mississippi state prison case that figured prominently in the discussion preceding adoption of the 1980 Act, the District Court removed the Department of Justice from the case, declaring that "The Department has clearly indicated that the litigation interest of the United States is not in accord with current orders of this court concerning the use of county jails by the defendant officials and that the government does not propose to be bound thereby." 14/ In a Mississippi

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13/ [Footnote continued]

> remedy the constitutional violation the court had identified . . . . it should be up to the state to determine how that requirement is going to be met.

Quoted in Washington Council of Lawyers, Reagan Civil Rights: The First Twenty Months 94, 94-95 (1982).

14/ Gates v. Collier, No. GC 71-6-K (N.D. Miss.), Order, Jan. 6, 1983, pp. 2-3.

jail case, the Department acceded to a request by Mississippi Congressman Trent Lott that it not send in federal inspectors to examine conditions in the Biloxi jail. One year later, 27 inmates died in a fire originating in flammable polyurethane padding in one of the cells. The padding had been barred by a federal court from other Mississippi prisons, and according to some observers, would have been discovered by the federal inspectors and removed from the Biloxi jail before the fire. Washington Post, Nov. 10, 1982, p. A10.

RIGHTS OF THE HANDICAPPED - § 504

Section 504 of the Rehabilitation Act was enacted by Congress to provide broad protections to handicapped persons. As of October 1983, only one law suit has been filed by the Department, against the Baylor University Medical Center, and this Mr. Reynolds apparently tried to block. 15/ More importantly, he has seriously undermined the § 504 regulations. In Georgia Association for Retarded Citizens v. McDaniel, No. 81-7485 (11th Cir.), the Department told the Court that regulations prepared by the Department of Health and Human Services were "entitled to no deference . . . discredited but not yet removed from the books" even though Vice President

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15/ See Letter of Resignation of Timothy Cook to William French Smith, Attorney General, pp. 11-12 (Oct. 18, 1983).

George Bush had assured the handicapped community just a few days earlier that the rules would not be abandoned or weakened. 16/

The Department has also tried to weaken the protections of § 504 by broadly construing the exception if there is an "undue burden" on the person required to make changes.

CONCLUSION

This record of opposition to the statutory and constitutional rights of minorities, women, handicapped people and other disadvantaged groups, seems to reflect the deliberate policy choices of this Administration.

What role has Mr. Meese played in these policies and practices? It has been reported that he was involved in the policy decision in the Bob Jones matter; that he was involved in the reversal of the Government's position on affirmative action; in the destruction of the independence of the Civil Rights Commission; in the over-whelmingly white male judicial appointments; in blocking the EEOC's filing of a brief in the New Orleans case; in the "critical debate over whether to narrow civil rights regulations in the Education Department."

16/ Civil Rights Leadership Conference Fund, An Oath Betrayed: The Reagan Administration's Civil Rights Enforcement Record in Education 7 (Oct. 1983).

See National Journal, Mar. 27, 1982, p. 540. These reports are cause for concern.

The business of the Attorney General is to enforce the law, whether he agrees with it or not. As Justice Brandeis said many years ago, "the Government is the potent, the ominipresent teacher. For good or ill, it teaches the whole people by its example." Olmstead v. United States, 277 U.S. 438, 485 (1927). Nowhere is this more true than with respect to the Nation's chief law enforcement officer.

But more than fidelity to the law is required. It is the business of the Justice Department to do justice, Berger v. United States, 295 U.S. 78, 88 (1935), and to lead the Nation in its never-ending quest for social justice, a quest that requires amelioration of the effects of prior discrimination, 17/ elimination of present discrimination, and the effective prevention of future discrimination.

In our judgment, the current Department of Justice has not fulfilled these obligations. We believe that Mr. Meese should be confirmed only if he assures this Committee and the Nation that he will lead the Department in following the law and in vigorous promotion of civil rights.

17/ Louisiana v. United States, 380 U.S. 145, 154 (1965); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418 (1975); Swann, 402 U.S. at 16, and Green, 391 U.S. at 437-38.

APPENDIX A

Thomas D. Barr
St. John Barrett
G. D'Andelot Belin
Charles R. Both
Wiley A. Branton, Sr.
Jack E. Brown
Tyrone Brown
Goler Teal Butcher
J. LeVonne Chambers
Jerome A. Cooper
Michael A. Cooper
James T. Danaher
Drew S. Days, III
Sara-Ann Determan
Adrian W. DeWind
David M. Dorsen
John W. Douglas
Robert Ehrenbard
Fred N. Fishman
J. Harold Flannery
Marc L. Fleischaker
Philip A. Fleming
Jefferson B. Fordham
John D. French
Lloyd K. Garrison
Michael H. Gottesman
Erwin N. Griswold
Herbert J. Hansell
Conrad K. Harper
Claude H. Hogan
Jerome E. Hyman
Roy William Ide, III
Hugh R. Jones, Jr.
John B. Jones, Jr.
Edward E. Kallgren
Warren K. Kaplan
Robert H. Kapp
Maximilian W. Kempner
Stuart J. Land
George N. Lindsay
Hans F. Loeser
Robert MacCrate
Burke Marshall
Robert B. McKay
Ronald S. Miller
Robert F. Mullen
Robert A. Murphy
James M. Nabrit, III
Maureen O'Bryon
Kenneth Penegar
Stephen J. Pollak
Norman Redlich
James Robertson
Mitchell Rogovin
Edward W. Rosston
Charles Runyon
Lowell E. Sachnoff
William G. Schaefer, Jr.
John R. Schafer
Daniel M. Singer
McNeill Smith
Asa D. Sokolow
Nicholas U. Sommerfeld
David S. Tatel
Michael Touff
Marna S. Tucker
Bernard Weisberg

Senator MATHIAS. Thank you.

I find myself somewhat torn by your announcement that you are here to represent Burke Marshall. In the first place, you have stated the case very succinctly and very ably. So we are glad to have you, although we are sorry not to have him.

Mr. POLLAK. You were going to have both of us.

Senator MATHIAS. On the other hand, he has had a day in New Haven instead of a day in Washington. So perhaps he is better off, and we are equally well off.

Mr. POLLAK. He wanted to be here.

Senator MATHIAS. Mr. Evans?

Mr. EVANS. I am Faith Evans and I am associate for policy advocacy for the United Church of Christ's Office for Church in Society.

I thank you for allowing me to present this testimony on behalf of two agencies of our church, the Office for Church in Society and the Commission for Racial Justice.

I come before you not as an investigative arm of any institution which has acquired volumes of data that will trigger investigations by the press and the committee into the past of Mr. Meese, but as a representative of an institution committed to active witness for justice in our society.

The nomination of Mr. Meese by the President of the United States to the position of Attorney General represents to us a dangerous continuation of a recent trend of giving extremism of the political right increasing institutional legitimacy.

The Senate in the past has rejected the false counsels of radical extremism, holding true to its best traditions—conservative in its sense of balance, liberal in its search for justice. The Senate has known the American people are neither radicals or extremists.

Mr. Meese, throughout his career, has shown over and over again that his views are clearly those of the radical right of this Nation's views that have helped to spark the backlash which has slowed down and reversed the progress this country has made toward equal rights for all Americans. In his role as adviser to President Reagan, Mr. Meese has clearly been the behind-the-scenes leader in those efforts.

The leadership role Mr. Meese played in the manipulations around the reauthorization of the Civil Rights Commission has not increased the trust of those of us who have struggled for enforcement of the laws presently on the books. As a member of the Leadership Conference on Civil Rights, the United Church of Christ participated in efforts to negotiate with the Congress and the White House over the reauthorization of the Commission on Civil Rights. After months of wrangling over the independence of the Commission in November Senator Robert Dole intervened with a compromise proposal which called for an eight-member Commission, four appointed by the President and four by congressional leaders. The deal hinged on the selection of specific people as Commissioners. Democratic congressional leaders would reappoint Mary Frances Berry and Blandina Cardenas Ramirez, two of the persons the President previously fired. The House Minority Leader, Robert Michel, would reappoint Jill Ruckelshaus. This agreement committed President Reagan to reappoint Mary Louise Smith.

Dole's compromise was acceptable to a majority of civil rights groups. On November 10, after several intercontinental telephone conversations with Edwin Meese, who was with Regan in Tokyo, Dole reported that all parties had agreed. Senator Howard Baker went to the floor of the Senate and announced the compromise shortly after 1 a.m. on November 11. After token opposition was swept aside, the Senate approved the restructured Commission by a 78-to-3 vote.

When Mr. Meese returned from Japan, he took decisive action to overturn this compromise agreement. Although the President signed the reauthorization bill, the White House announced that he would not reappoint Mary Louise Smith. The White House then persuaded Representative Michel to renege on his pledge to appoint Jill Ruckelshaus, and instead to name Robert Destro, who had formerly been nominated by the President to the Commission, but had withdrawn his name because of such wide opposition. Through this Meese maneuver the U.S. Commission on Civil Rights came under total control of the administration, losing its important ability to monitor independently the enforcement of civil rights laws. One could not charge Mr. Meese with any violation of law for those machinations, but it is clear he would not have won any awards for ethics or honesty in that situation.

The political extremism that characterizes the radical right and is represented in the views of Mr. Meese is no minor rash of the body politic. It is a creeping malignance that if unchecked will destroy vital principles of the American dream. In a time that has cast up every manner of extremist debris on our social shore, the question inevitably arises: Why is the political extremism represented by Mr. Meese and the radical right of special concern to the church?

The church, we believe has a responsibility to witness for justice in our society, especially for those who can least protect themselves from the unjust.

Poisonous seeds, such as the one Mr. Meese planted a few months ago when he denied there was hunger in this Nation, are a tactic of the extreme right in this country to implant in the minds of Americans the conviction that the demands of minorities, women and the poor, for equal justice, equal rights and equal opportunity are somehow conspiracies to deny hard-working Americans their rights.

Through past speeches and public statements Mr. Meese has shown his ongoing willingness to plant those poisonous seeds around the country on any issue or subject where the Federal role in carrying out its congressional mandate is challenged by the extreme right.

In a recently published article in the Nation magazine, February 4, 1984, by William Taylor, the author commented that "as the year, 1983, ended, a moderate veteran Republican Congressman lamented privately that Jim Baker-type pragmatists were being replaced throughout the Government by Ed Meese-type ideologues." He went on to say that "behind their efforts to undermine affirmative action, school desegregation, and the Voting Rights Act, and in the process narrow prevailing interpretations of civil rights law, lies ill-concealed anger at legislative, judicial and past executive actions that they believe have changed the rules of the game."

We, in the church, who over the last 20 years have actively worked to change the "rules of the game" that had prohibited justice in this society to groups that had been denied it, feel the appointment of Edwin Meese to the position of Attorney General, would more than encourage those on the extreme right to continue their efforts to plunge this Nation back into the dark ages of our most recent past.

Those of you on the Judiciary Committee face some extremely hard choices in the coming days, for this is not just a matter of another political appointment to approve. Your vote on this nomination will reflect your personal view of where this Government should be in the future on the issues of justice in our society.

The Office of Attorney General is an extremely powerful and influential position. To have it in an individual who has expressed the views of the extreme political right is to signal those in this Nation who have counted on the Department of Justice to protect them from injustice that they can no longer expect relief through our constitutionally mandated laws.

Senator **Mathias**. Mr. Evans, I regret, but your 5 minutes is up.

Mr. **Evans**. I only have one more sentence.

Our Nation's strength has relied on a continued and sometimes prophetic belief that our system can be fair and not cater to the extremes on either side. That belief is predicated on the assurance that our political leadership will keep the balance. We in the United Church of Christ ask you to provide that balance in your present deliberations on this nomination. It is needed—now, more than ever.

Thank you.

Senator **Mathias**. Thank you very much.

Mr. Biddle?

Mr. **Biddle**. Good afternoon.

I want to thank the committee for the opportunity to testify. My name is Craig Biddle. I am national director of IMPACT, a national interreligious organization.

The following statement is my personal statement of concern in this area. However, other clergy with substantial background have asked to be heard by this committee as joining in a general expression of concern.

Clergy in the area have invited Mr. Meese to a pilgramage to hunger lines and legal services that will give abundant evidence of the presence of real poverty in our land.

I have been asked to introduce into the record a letter of invitation dated March 1 from the Reverend William Crawford inviting Mr. Meese to witness hunger. To the best of my knowledge, Mr. Meese has not responded to similar invitations in the past. Perhaps this committee would endorse this invitation.

Senator **Mathias**. Are you offering that letter for the record?

Mr. **Biddle**. Yes, sir.

Senator **Mathias**. Do you have any objection?

Senator **Metzenbaum**. No.

Senator **Mathias**. Without objection, it will be admitted as part of the record.

[The following was received for the record:]

NATIONAL
IMPACT

Craig Biddle
National Director
IMPACT/National Office
100 Maryland Avenue, N.E.
Washington, D.C. 20002
202/544-8636

Policy Board
Charles Bergstrom
Lutheran Council, USA
Chairperson
Karen Woodall
Florida IMPACT
Vice Chairperson
Jack Johnson
New Jersey IMPACT
Secretary
Robert Alpern
Unitarian Universalist Assn.
Eddie Mae Binion
Episcopal Urban Caucus
Paul Bowdler
Lutheran Church in America
George Chauncey
Presbyterian Church, USA
A. Garnett Day, Jr.
Christian Church (Disciples)
James Hamilton
National Council of Churches
Joyce Hamlin
United Methodist Church/WD
Leland Wilson
Church of the Brethren
H[illegible] Houston
United Methodist Church/GS
Kim Jefferson
United Methodist Church/WD
Arthur Keys
United Church of Christ/HM
Paul Kittlaus
United Church of Christ/OCIS
Casper LoBiondo
Jesuit Social Ministries
Magaly Rodriguez Mossman
American Lutheran Church
Philip Newell
United Presbyterian Church, USA
Mary Jane Patterson
United Presbyterian Church, USA
David Saperstein
Union of American Hebrew
Congregations
Audrey Smock
United Church of Christ/BWM
Edward Snyder
Friends Committee on National
Legislation
Robert Tiller
American Baptist Churches, USA
Marjorie Tuite
Church Women United
William Weiler
Episcopal Church
Robert White
Reformed Church in America

STATE IMPACTS
[illegible]/PA
Mike [illegible]/OK
Robert Greene/OH
Marie Green/CO
Mike Hall/OR
Glenn Holman/CA
Eleanore Ivory/NY
Jack Johnson/NJ
Ron Johnson/MN
John Price/WV
Allen Rice/MI
Paul Stanfield/IA
Harold Statler/IN
Linda Toone/TX
Bonnie Vaux/OR
Marti Webb/AL
Jack Weller/MO
Peter Wells/CT
Richard Wood/IL
Karen Woodall/FL

FOR IMMEDIATE RELEASE
MONDAY, MARCH 5, 1984

PRESS CONTACT:
Ira Nerken
223-6274

CLERGY JOIN IN QUESTIONING MEESE NOMINATION BEFORE JUDICIARY COMMITTEE; INVITE MEESE TO VISIT THE POOR

The Rev. Mr. Craig Biddle, national director of the interreligious organization IMPACT, testified today in opposition to the nomination of Edwin Meese as Attorney General. Rev. Biddle--the cousin of both Francis Biddle, Attorney General under Franklin Roosevelt, and of the artist George Biddle, best known for his frescoes which adorn the Justice Department--urged the Senate Judiciary Committee to consider whether Mr. Meese is fit for office, in light of his "insulting" references to the poor and hungry in America, and the "absolutely fundamental Judaeo-Christian requirement that the administrator of justice show special sensitivity for the plight of the poor, and the hungry, and protect the weak and powerless."

Rev. Biddle also announced a growing list of clergy attaching their names to a statement of concern that Mr. Meese's comments and public position make him unfit for the office of Attorney General. The statement, signed by religious leaders including the Rabbi Arthur Hertzberg;

NOTE: The views expressed herein are those of the specific authors cited, and do not necessarily represent the views of the organizations with which they are affiliated, or of IMPACT.

the Rev. Mr. John Steinbruck, Luther Place Church, Washington, D.C., and the Rev. Mr. Gary Gunderson, Oakhurst Southern Baptist Church, Decatur, Georgia, reads as follows:

> We in no way question Mr. Meese's individual religious and private commitment. However, Mr. Meese's comments and public position on the plight of the needy and hungry in America raise grave concern and serious questions about his understanding of Judaeo-Christian traditions regarding the responsibilities of the administrator of justice to those most vulnerable, the poor, the hungry, and the needy.

"We have had little time to bring the views of the clergy before the Judiciary Committee," noted Biddle, "and hope that many of our brother and sister clergy can add their voices to ours in Congress before the vote on Mr. Meese."

Rev. Biddle also announced that other clergy in Washington, disturbed that the nominee for Attorney General could "display an apparent insensitivity to the injustice of those who are hungry and poor," have invited Meese to "bear witness to the truth," by visiting soup lines and legal aid bureaus near the White House when the Committee's hearings close later in the week. The invitation is attached.

# # # #

Ecumenical Christian Ministry
GEORGE WASHINGTON UNIVERSITY
2131 G STREET N.W.
WASHINGTON, D.C. 20052

PHONE: (202) 676-64

March 1, 1984

Mr. Edwin Meese
The White House
Washington, D.C.

Dear Mr. Meese,

As you may know, in the upcoming sessions of the Senate Judiciary Committee, several members of the clergy will be presenting reactions to your expressed attitudes regarding the poor and the hungry. Given the conviction that justice is a central feature of Judeo-Christian faith and understanding, members of the religious community have been deeply concerned about the appropriateness of the appointment of one to be Attorney General who displays an apparent insensitivity to injustice of those who are hungry and poor.

Just as central to our religious tradition is the experience of "bearing witness to the truth". We invite you to do that with us. Begining at 7:30am on Tuesday, March 8th, we invite you to join local religious leaders in the neighborhood of the White House to a pilgrimage of bearing witness to the injustices of Hunger and poverty. The pilgrimage will begin at Miriam's Kitchen, a breakfast program for homeless people, four blocks from the White House, at Western Presbyterian Church, 1906 H Street, NW.

Our prayer is that in this pilgrimage together, we can bear witness to the truth which today reveals not anecdotal reflections but rather the injustices of poverty and homelessness in our land.

In these important days, we call you to witness for the sake of the fullest sense of justice. We hope you will join us on March 8th.

Please notify us as soon as possible if you are not able to meet with us on March 8th, so that we might reschedule this pilgrimage to coincide with your most available time. Please direct your response to Washington attorney, Mr. Ira Nurkin, 1302 - 18th Street, NW , Suite 203 Washington, DC 20036; telephone 223-6274.

Sincerely yours,

William C. Crawford

(Rev.) William C. Crawford

RWC/jcm

CHRISTIAN CHURCH (DISCIPLES OF CHRIST)
PRESBYTERIAN CHURCH, U.S.
UNITED CHURCH OF CHRIST
UNITED METHODIST CHURCH
UNITED PRESBYTERIAN CHURCH

Mr. BIDDLE. Let me briefly review the historic place that the idea of justice combined with a particular concern in favor of the poor has in Judeo-Christian culture. Many, many centuries ago, at the dawn of our culture, prophets of God instinctively knew, as have Christians and Jews down through the years, that if justice is to be established in the land, there must be programmatic help to "deliver the needy when they crieth; and the poor that have no helper" (PS 72:12). As early as the eighth century B.C., Hebrew prophets of the Old Testament like Amos, Hosea, Isaiah, and Micah proclaimed the indissoluble connection between justice and compassion for the needy.

In fact, the Hebrew word for justice, "tzedakah," is nearly synonymous with assisting the poor, not as an act of charity, but as a duty. Basic to justice are religious, social, and ethical implications that are fundamental to human relations, common to rich and poor alike, to the great and the lowly, to the welfare of the whole of humanity. In common usage justice still retains significant traces of its original comprehensiveness. Justice imposes a duty to perform group and individual acts of social reparation, welfare, and assistance.

Furthermore, in one of the classic passages of the New Testament, Jesus seems acutely aware, not only of the hovering presence of the poor among us, "the poor you will always have with you," but also of the awful consequences for those who do not even see the poor literally sitting at their gates—or in urban areas, on the grates.

In the Gospel of Matthew, Jesus warns the world that to see the hungry or the thirsty or the sick and not to minister to them is to risk what he called eternal punishment. The only conclusion one can draw is that anyone in leadership in this country who cannot even see the poor in our midst, and therefore cannot respond, is endangering not only himself, but the entire Nation.

One can go not only to the very roots of holy history, but to the genesis of American history and find the seeds of the tradition, that the head of the Department of Justice be ultimately in touch with the realities of the life of the people.

George Washington, in nominating Edmund Randolph as the first Attorney General of the United States, said he regarded the office as requiring a "disposition to sacrifice to the public good" which he believed Randolph possessed. Sacrifice to the public good clearly implies an emphatic understanding of the public as a whole, not just the wealthy and influential, and willingness to sacrifice for the betterment of that public.

One need not reiterate in detail Mr. Meese's statement that "there is no evidence of hunger in the United States" but apparently he could not see the faces of hunger in this Nation, nor could he see the authoritative and horrifying statistics readily available to him about poverty in the United States.

One also need not repeat Mr. Meese's statement that he had "considerable information" that people in soup lines are freeloaders. How he amassed "considerable information," about his so-called freeloaders, yet had no information about the millions who stand legitimately in humiliating lines of hunger, is a question worth pondering.

The emphasis on protection of the vulnerable is no accident, it is rooted firmly in the Judeao-Christian tradition.

Consider the fact that a Secretary of Agriculture in a previous administration made a public racial slur which led to his dismissal. Consider also that the Secretary of the Interior in this administration made insensitive remarks about minorities, particularly the handicapped, and this led to his resignation in disgrace.

It is a well known fact that Mr. Meese has made thoughtless comments about the poor, and tasteless jokes about Scrooge and his bad press—jokes that are a profound insult to millions who live in real poverty. Yet these things and similar remarks about the most vulnerable people in our society have not led to Mr. Meese's dismissal, but his elevation to candidacy of Attorney General.

Had such insensitive remarks been made about any other minority in the United States, be it black or Jew, I doubt we would ever be considering Mr. Meese today. Yet it is the vulnerable poor about whom Mr. Meese makes jokes, that the Justice Department is called by tradition and the Judeo-Christian roots of our society to protect. I am reminded of Victor Hugo's comment: "There is always more misery among the lower classes than there is humanity in the higher."

What does this have to do with the enforcement of justice? Consider this: Those who most need the protection of the Attorney General and the Department of Justice have apparently not even been seen or heard by this candidate.

In conclusion, Mr. Meese should not be confirmed by the Senate as Attorney General, because on religious and historic grounds he does not have the qualifications to fill the role.

In his inaugural address in January 1953, Dwight Eisenhower said: "Whatever America hopes to bring to pass in the world must first come to pass in the heart of America."

We beg you to stop this train, a train that seems to be moving inexorably toward confirmation of Mr. Meese, and allow the President to nominate someone else, a person who can give hope to the heart of America, not fill it with fear and mistrust.

Thank you.

Senator MATHIAS. Thank you.

Mr. Pollak, in your statement you referred to several respects in which, in the judgment of the Lawyers' Committee, the Department of Justice fails to make use of all of the legal tools at its disposal.

Let us assume for the moment that these are accurate statements with regard to remedies under the law to deal with discrimination.

Are you inferring that they should be linked to Mr. Meese?

Mr. POLLAK. We state that we do not have information as to the role, if any, of Mr. Meese with respect to those positions. At least in one instance—we refer to it on page 9 of our formal statement—the role of Mr. Meese was widely reported, and that was with respect to the change in the position of the United States respecting the allowance of tax-exempt status to discriminating schools.

We are suggesting that the committee satisfy itself as to what Mr. Meese's role has been in the failure of the administration to use these remedies approved by the courts, indeed, in certain circumstances held necessary to be used by the courts.

We suggest the committee know his role, and be certain that the Department of Justice will utilize or seek utilization of those remedies in the future.

Senator **Mathias**. Senator Metzenbaum, do you have questions?

Senator **Metzenbaum**. I have some questions that I would like to submit, and ask unanimous consent that my questions, as well as the answers be included in the record.

Senator **Mathias**. Is there objection?

If not, so ordered.

[The following was received for the record:]

STROM THURMOND, S.C., CHAIRMAN

CHARLES McC. MATHIAS, JR., MD.
PAUL LAXALT, NEV.
ORRIN G. HATCH, UTAH
ROBERT DOLE, KANS.
ALAN K. SIMPSON, WYO.
JOHN EAST, N.C.
CHARLES E. GRASSLEY, IOWA
JEREMIAH DENTON, ALA.
ARLEN SPECTER, PA.

JOSEPH R. BIDEN, JR., DEL.
EDWARD M. KENNEDY, MASS.
ROBERT C. BYRD, W.VA.
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZ.
PATRICK J. LEAHY, VT.
MAX BAUCUS, MONT.
HOWELL HEFLIN, ALA.

VINTON DeVANE LIDE, CHIEF COUNSEL AND STAFF DIRECTOR
DEBORAH K. OWEN, GENERAL COUNSEL
DEBORAH G. BERNSTEIN, CHIEF CLERK
MARK H. GITENSTEIN, MINORITY CHIEF COUNSEL

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

March 8, 1984

Mr. Steven Pollak
Lawyer's Committee for Civil Rights Under Law
Suite 400
1400 Eye Street, NW
Washington, DC 20005

Dear Mr. Pollak:

Enclosed is a list of five questions I have received from Senator Howard M. Metzenbaum regarding the nomination of Mr. Edwin Meese, III, to be Attorney General of the United States. Senator Metzenbaum has requested that you respond to these questions.

Your response should be made available to the Judiciary Committee as soon as possible. Your assistance in this matter is appreciated.

With best personal regards,

Sincerely,

Strom Thurmond

Strom Thurmond
Chairman

ST:jtn
Enclosure

United States Senate
WASHINGTON, D.C. 20510

QUESTIONS FOR STEVEN POLLAK
LAWYER'S COMMITTEE FOR CIVIL RIGHTS UNDER LAW

1. IS IT UNUSUAL FOR THE TRUSTEES OF THE LAWYER'S COMMTTTEE TO OPPOSE NOMINATIONS SUCH AS THIS ONE ?

2. WHAT CAUSED THE LAWYER'S COMMITTEE TO TAKE SUCH AN UNUSUAL POSITION AGAINST A NOMINEE ?

3. WHAT ARE YOUR VIEWS ON THIS ADMINISTRATION'S RECORD ON APPOINTING MINORITIES AND WOMEN TO JUDICIAL AND HIGH LEVEL GOVERNMENT POSITIONS ?
   IS MR. MEESE RESPONSIBLE FOR THIS ABYSMAL RECORD ON NOMINATIONS ?

4. TODAY, THE NEW YORK TIMES RAN A STORY ON ANOTHER REVERSAL BY THE JUSTICE DEPARTMENT IN A CIVIL RIGHTS CASE. IN THE BIRMINGHAM POLICE CASE THE DEPARTMENT NOW TAKES A POSITION THAT IS CONTRARY TO A CONSENT AGREEMENT THE DEPARTMENT SIGNED SHORTLY AFTER PRESIDENT REAGAN TOOK OFFICE. THAT AGREEMENT WAS DESIGNED TO HELP BLACKS AND WOMEN GAIN PROMOTIONS IN THE POLICE AND FIRE DEPARTMENT TO REMEDY PAST DISCRIMINATION. WHAT ARE YOUR VIEWS ON THIS REVERSAL ?

5. THERE HAVE BEEN A SERIES OF CASES IN WHICH THIS JUSTICE DEPARTMENT HAS REVERSED ITS POSITIONS IN CIVIL RIGHTS CASES. THE BOB JONES AND SEATTLE SCHOOL BOARD CASES ARE BUT TWO EXAMPLES.
   IN EVERY CASE, THE SHIFT HAS BEEN AWAY FROM DEFENDING THE CIVIL RIGHTS OF MINORITIES AND WOMEN. HOW DO THESE REVERSALS REFLECT ON MR. MEESE'S QUALIFICATIONS TO ASSUME THE POSITION OF ATTORNEY GENERAL ?

Senator MATHIAS. We ask the witnesses if they will respond in writing to Senator Metzenbaum's questions.

Senator METZENBAUM. Thank you.

Senator MATHIAS. The answers will become a part of the record. Senator Laxalt?

Senator LAXALT. I have no questions.

Senator MATHIAS. I have no further questions for this panel. Mr. Pollak.

Mr. POLLAK. As our written statement evidences, we circulated to our members this statement for their approval, and had just 36 hours in which to receive answers back. We would like to submit for the committee record the names of additional members of the lawyers' committee who approve the statement.

Senator MATHIAS. Without objection, the names of further subscribers to the statement will be included at such time as you provide them to the committee.[1]

Mr. POLLAK. Thank you, sir.

Senator MATHIAS. Thank you very much.

Senator Kennedy, do you have any questions for the panel?

Will the panel please stay at the table?

Senator Kennedy, who was out of the room for a moment, has come back.

Senator KENNEDY. Mr. Pollack, I want to welcome all of the members of the panel, and I apologize for being out of the room for a few moments, but I will certainly review your statements and testimony.

I would like to direct this to Mr. Pollak. He is very much aware of the effort that was made in the early part of the 1960's, to try to involve the legal profession and the Lawyers' Committee on Civil Rights in the fight for civil rights, and that committee was extremely effective, and I think made a very important contribution.

One of the contributions was building the public's confidence in the rule of law, and I am just interested now, having seen the record of this administration, how concerned are you about the public's respect for the rule of law, if the Attorney General seeks vigorous enforcement of various aspects of the criminal law, but seeks to avoid vigorous enforcement in cases involving civil rights.

Mr. POLLAK. We are here today to express that concern, Senator Kennedy, and our statement at the present time represents 58 of our trustees, lawyers, from around the country, that are in private practice, who donate their time out of a concern for the enforcement of civil rights.

There are both civil and criminal civil rights laws, and both need full enforcement and the full support of the Attorney General and the Department of Justice, if respect for the rule of law is going to be abroad in this land.

We are very much concerned, and have brought before this committee in our statement instances where we feel there have been significant defaults in the last 3-plus years.

Senator KENNEDY. Let me just continue. It seems that on some of the more controversial cases, that the White House is being briefed, and the White House is taking a position on the cases themselves.

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[1] Not available at press time.

As someone who has been in the Justice Department, and has had responsibility in the areas of civil rights, what is appropriate? When do you leave it up to the lawyers to make the legal decisions about the intervention of the Justice Department in these cases, and appeals to the Supreme Court, and when do you talk with the political people, in any White House, to get their input. What should the standards be, and what should we expect of the Attorney General?

Mr. POLLAK. Well, my response would be that the first responsibility of the Attorney General is to enforce the law as written by the U.S. Congress. There is the Attorney General's guide. Of course, there are areas of priority, areas of new legislation where I believe the elected Chief of the Government is appropriately in contact with his Attorney General. But it seems to me that the standard for the Attorney General in law enforcement is in the laws written by the Congress, and not in the positions of the White House as to particular interpretations of the law, other than on a matter of priorities or on the need for changes in the laws. I think that in my own view, there are no other contacts that are really appropriate between the White House and anyone other than the Attorney General. The Attorney General ought to run his Department, and he ought to run it in accordance with the laws enacted by the Congress.

Senator KENNEDY. That is fine. I want to thank you very much for that.

As I understand, you made a statement in support of affirmative action, and also a comment that you thought it was essential in terms of filling both the letter and the spirit of the laws.

Mr. POLLAK. That is correct, Your Honor. We very much believe that the circumstances of correction of the effects of past discrimination will require affirmative action and race-conscious remedies in appropriate cases.

Senator KENNEDY. Thank you very much.

I want to thank the panel very much.

The CHAIRMAN. We want to express our appreciation to you for your presence here.

Now the next two witnesses were requested by the distinguished Senator from Ohio, Senator Metzenbaum.

Senator Metzenbaum, are you ready?

Senator METZENBAUM. I am ready.

The CHAIRMAN. If you gentlemen would come and take your seats, Mr. John McKean, and Mr. Thomas Barrack.

Will you gentlemen stand and be sworn?

Is this an adviser to one of you?

That is Secretary Califano.

Do you swear that the testimony in this hearing shall be the truth, the whole truth and nothing but the truth, so help you God?

Have a seat.

Now Senator Metzenbaum, I believe you called them.

Mr. MCKEAN. Mr. Chairman, may I read a very brief opening statement?

The **Chairman**. Yes; you are both entitled to make an opening statement before you are questioned.

Senator **Metzenbaum**. Mr. Chairman, it seems to me I have called these witnesses as my witnesses, and I do not see any particular reason. They were not part of the regular hearing procedure, and I would like to just go forward with my questions. I think I have the right.

The **Chairman**. In fairness to the witness, we always let the witness make his own statement.

You can question first or I can go first, either one you want. Since you called them, I thought we would let you go forward.

Which one do you want to go forward with?

Senator **Metzenbaum**. I asked for Mr. Barrack. I called him and I would like to start asking him questions.

The **Chairman**. Mr. Barrack, do you have any opening statement? If so, following that there will be questions.

TESTIMONY OF JOHN McKEAN AND THOMAS BARRACK

Mr. **Barrack**. Thank you.

I would like to make a brief opening statement that really hinges with regard to the purpose that I assume I have been asked to testify here today by Senator Metzenbaum.

In an attempt to clarify some of the atmosphere and to add some facts to Senator Metzenbaum's inquiry, I would like to give you a brief transactional account of my involvement in the Meese home in La Mesa.

In the second week of August 1982 I received a call from a very close personal friend of mine, Pendleton James. Penn and I have been friends since 1971 and have had both a social and a business relationship. At that point in time Mr. James asked me if I would have the time to look at a friend's home in La Mesa, CA, which had not been sold. That was the Meese home. He indicated at that time that the Meeses had had the house on the market for a substantial amount of time without any success in selling it, that because they were in Washington, they were at a loss for what marketing ideas or additional help they might be able to find.

At that point in time I told them I would be happy to help and investigate. And in fact, thereafter, went to San Diego to look at the house.

On about August 15, I visited the office of Mr. Meese's lawyer, Lee Knudsen who had arranged for me to view the house. I viewed the house. I made a determination what the pluses and the minuses were. I made a determination of what might be done, and to tell you, quite honestly, I saw a very attractive investment opportunity at that point in time. I will not give you the litany of reasons as to my rationale for the investment, but would be happy to respond to that at a future time.

At that point in time I had two or three ideas of people with whom I was associated who maybe interested in the property. I was not sure exactly what the transaction would look like in its financial structure, so I proceeded with the discussions with both Mr. Knudsen and the bank who had had the underlying first, second, and third trust deeds at that point in time, Great American Federal.

I thereafter determined that an attractive finance structure could, in fact, be set, that there were building opportunities with the contiguous lot to the house and it was a viable and attractive investment opportunity, and brought two of my friends into the transaction.

The first individual with whom I brought into the transaction is a fellow by the name of Ted Elkin and Ted has worked for me for the past 5 years, been a close friend and associate, trusted confidant. Unfortunately, I was severed from the organization with which I was employed in June of 1982, and at that time was unemployed. At that point in time, Elkin was with me. We examined the comparable sales in the area, etc. I had pursued the discussions and negotiations with regard to the financing that might be available on the house at that point in time and had reached the decision that, in fact, at a specific price, the investment would be an attractive opportunity.

The problem with Elkin, although I was willing to lend him the down payment at that time, and I will not tarry you with the details of the structure, but would be happy to get into that, was due to his lack of earning capacity for the last few years. He did not have the credit rating that was necessary to obtain a loan in the range of $240,000, with which you are all familiar.

So at that point, Irvin Howard, Mr. Howard had worked for me since 1976 as a vice president of construction of a company in which I was the president and thereafter had become a very close friend, business partner, contractor, and overall confidant on various transactions.

At this point in time I brought Mr. Howard into the transaction. Mr. Howard purchased the property on or about September 1. Subsequently sold an interest in the property to Mr. Elkin. The property was sold in, I believe, in May of 1983. The property was sold at a loss. I will be happy to explain to you my understanding of the circumstances surrounding that.

I at no time during any of these transactions had ever had any discussion with Edwin Meese with regard to a position in Washington. I at no time subsequent to that transaction had discussions with Mr. Meese with regard to a position in Washington. I did not know Mr. Meese prior to the transaction in Washington and that is the end of my opening statement.

The CHAIRMAN. The Senator from Ohio?

Senator METZENBAUM. Mr. Barrack, are you an attorney?

Mr. BARRACK. Yes; I am.

Senator METZENBAUM. What is your principal occupation now?

Mr. BARRACK. My principal occupation at this time is real estate developer.

Senator METZENBAUM. Did you practice law at one time?

Mr. BARRACK. Yes; I did.

Senator METZENBAUM. And with whom?

Mr. BARRACK. Kalmbach and Chillingsworth, law firm in Los Angeles, from 1972 to 1974.

Senator METZENBAUM. That is Herb Kalmbach?

Mr. BARRACK. Yes; it is

Senator METZENBAUM. And when did you first meet Ed Meese?

Mr. BARRACK. I first met Ed Meese, to the best of my recollection, in November of 1982—excuse me, yes, that is correct, November of 1982.

Senator METZENBAUM. You became aware of the fact that his home was for sale through Pendleton James?

Mr. BARRACK. Yes, sir; that is correct.

Senator METZENBAUM. When was that?

Mr. BARRACK. Senator, I believe it was sometime during the second week of August 1982, and I do not recall the exact date.

Senator METZENBAUM. How and when did you bring up the home to Mr. Irvin Howard?

Mr. BARRACK. The when and where I brought up the home with Mr. Irvin Howard was on or about the 16th or the 17th of August, Senator. It was almost immediately after I started investigating the transaction, and the where was, I believe, on the telephone.

Senator METZENBAUM. Did you tell Mr. Howard whose home it was?

Mr. BARRACK. No, sir; I did not.

Senator METZENBAUM. Why not? It was a prominent man in Washington, prominent in California. Is there some reason you did not tell him the identity?

Mr. BARRACK. No, sir; there was no reason. To me, it was a business transaction and the economics stood in and of themselves and there was no necessity to even discuss whose home it was.

Senator METZENBAUM. Did you tell him or advise him that in essence you were doing a favor to the seller in trying to find a buyer?

Mr. BARRACK. No, sir, I did not advise him because that was not the fact.

Senator METZENBAUM. Did you tell Mr. Howard that the home was a good investment?

Mr. BARRACK. Yes, Senator; I did.

Senator METZENBAUM. Subsequently lost about $50,000 or $60,000 on the home, did he?

Mr. BARRACK. I am not sure of the exact amount, Senator, but he did lose money on the transaction.

Senator METZENBAUM. What would you guess he lost?

Mr. BARRACK. To the best of my recollection, I think about $32,000 was the difference between the actual sales price—I would say maybe all in, $40,000.

Senator METZENBAUM. Interest at about, I guess it was, 11 percent, on $240,000 for 8 months, wouldn't that be about another $20,000 or 17?

Mr. BARRACK. I do not normally think, Senator, that I would capitalize interest. Interest is usually an expense. So I did not include the interest. But if you were to include the interest, that would be substantially right.

Senator METZENBAUM. Did you and Mr. Howard make a trip to San Diego to look at the home?

Mr. BARRACK. Yes, we did.

Senator METZENBAUM. How much time did you take to inspect the home?

Mr. Barrack. I personally spent the better part of 3 or 4 days. Mr. Howard did not spend near that amount of time. I think he just visited the home once or twice prior to the purchase.

Senator Metzenbaum. When was that?

Mr. Barrack. That was between August 16 and September 1 or 2 of 1982.

Senator Metzenbaum. Prior to talking to Mr. Howard, did you discuss the home with Mr. Meese?

Mr. Barrack. I discussed with Mr. Meese on August 18, I believe, an issue, and by then I had discussed the house with Mr. Howard.

Senator Metzenbaum. You had what?

Mr. Barrack. I had discussed the house with Mr. Howard.

Senator Metzenbaum. Prior to talking to Mr. Meese?

Mr. Barrack. Yes, sir.

Senator Metzenbaum. Did you discuss price and financing and other terms prior to August 18, 1982?

Mr. Barrack. I am sorry, Senator, with whom?

Senator Metzenbaum. Prior to talking to Mr. Meese?

Mr. Barrack. Yes, sir.

Senator Metzenbaum. Did you discuss price and financing and other terms prior to August 18, 1982?

Mr. Barrack. I am sorry, Senator, with whom?

Senator Metzenbaum. With Meese?

Mr. Barrack. Not prior to August 18, no, sir.

Senator Metzenbaum. When you and Mr. Howard inspected the house, did Mr. Howard agree that it was a good investment at the price?

Mr. Barrack. Yes, sir, he agreed with my assessment.

Senator Metzenbaum. To your knowledge, what were Mr. Howard's plans for the house?

Mr. Barrack. To the best of my knowledge, Senator, his plan was to ask one of his three sons to reside in the house, along with or in lieu of Ted Elkin, to do cosmetic work. The house had not been lived in for 20 months. It was a beautiful house. It just needed a little bit of life put back in, and perhaps evaluate the viability of building a new house on the contiguous lot to the property. I believe the overall intent at the time was it looked as if the economy was coming back, interests were on a downswing, that the timing would be absolutely perfect to make a decent return on the investment, if somebody lived in it, gave it some tender loving care and was patient.

Senator Metzenbaum. At these hearings I produced a handwritten document that has Mr. Meese's handwriting that has been included in the papers. I assume you have seen this document?

Mr. Barrack. Yes; if it is the document that was in The Washington Post; I have seen it.

Senator Metzenbaum. That is a copy of the document which Meese had already identified as representing a telephone conversation with you on the August 18, 1982, right?

Mr. Barrack. If you say that is accurate, Senator, I would agree.

Senator Metzenbaum. Well, you have seen the document in the Washington Post. I will send you down a copy.

Mr. Barrack. I would appreciate that.

Senator **Metzenbaum**. Does that pretty accurately reflect the substance of the conversation you had with Mr. Meese on August 18?

Mr. **Barrack**. Senator, would you like me to take it line by line?

Senator **Metzenbaum**. No, just tell me if that in general represents——

Mr. **Barrack**. In general, I would say it is accurate.

The **Chairman**. What document are you talking about?

Mr. **Barrack**. I am now discussing the memorandum.

Senator **Metzenbaum**. It has heretofore been offered into evidence as exhibit 3-B. It is Meese's handwritten note dated August 18.

The **Chairman**. Thank you.

You may proceed, Senator.

Senator **Metzenbaum**. I think you just answered, essentially, yes. Was that your answer?

Mr. **Barrack**. Yes, Senator.

Senator **Metzenbaum**. Now as I understand it, at that point, August 18, 1982, you did not know Mr. Meese, or had just recently been introduced to him. Is that pretty accurate?

Mr. **Barrack**. Yes, Senator; that is accurate.

Senator **Metzenbaum**. But as you read that note, it appears you suddenly were a confidant. You were advising him of the details of the sale. You are talking about avoiding publicity, an arm's length transaction, and trust raises more problems, and the son is to reside and Lee is trustee, and then talk about various and sundry other things.

Explain to me how is a fellow by the name of Tom Barrack, living 275 or 300 miles away from the location of this property, actually living on the West Coast, and Mr. Meese is in Washington—how does it develop that you are suddenly putting together all of the details of this transaction for a man who is almost a stranger to you?

Mr. **Barrack**. Senator, I would answer that question by indicating that all my discussions with Mr. Meese were really representing the financial interests of Mr. Howard and subsequently Mr. Elkin as the transaction developed, that the discussions I had with him were strictly with regard to provisions and details in the transaction which at that point in time his lawyer was incapable of making a final determination.

Senator **Metzenbaum**. I did not mean to cut you off. Go ahead.

Mr. **Barrack**. The way we came together, it was both Mr. Meese's good fortune and my good fortune to have a close personal friend in Pen James.

Senator **Metzenbaum**. You say you were representing Mr. Howard.

Explain to me how trusteeship, avoiding publicity, filtering one level of the transaction, arm's length transaction, trust raises more problems, compromise, Lee has trustee, tell me why were you concerned with those issues on Mr. Howard's behalf, or was it Mr. Meese who brought up the issues?

Mr. **Barrack**. No; as a matter of fact, Mr. Meese was totally in the dark when I talked with him in regard to these topics. He had no idea as to the provisions of the sale of the house. The issue I was concerned in representing Mr. Howard was the idea had been left on the table by one of the participants in the transaction, I do not recall which, that the transaction might best be handled through the institution of a trusteeship in which title would pass from Mr. Meese into the trust, held in trust for the Howards.

Senator **METZENBAUM**. Who proposed that?

Mr. **BARRACK**. Senator, I cannot recall.

Senator **METZENBAUM**. Was it you?

Mr. **BARRACK**. No, sir; it was not.

Senator **METZENBAUM**. Was it Mr. Meese?

Mr. **BARRACK**. No, sir; it was not.

Senator **METZENBAUM**. Was it Jim, was it Tom or Lee? There are not that many players in this matter.

Mr. **BARRACK**. To the best of my recollection, I believe it was a staff lawyer at San Diego Federal Savings that had recommended that due to problems in publicity that they had had in the industry as a result of the sale of prominent persons' homes, to protect the purchasers.

Senator **METZENBAUM**. You are telling me that a staff lawyer at the San Diego Federal comes up with the idea of setting up all of these transactions, avoiding publicity, one level of transaction, because there had been some publicity, but Mr. Meese at that moment had not had a scintilla of publicity concerning his home or ownership. He had been the President's counselor. And you mean to say some staff level lawyer at San Diego Federal suddenly decided we had better do it that way? Are you telling me that?

Mr. **BARRACK**. Senator, what I am telling you is I do not recall exactly how the issue came up. To the best of my recollection, I believe that is the manner in which it happened. The issue was not to protect Mr. Meese. The issue was to protect the purchaser.

Senator **METZENBAUM**. In Mr. Howard's deposition, it does not say anything about that at all. He did not say anything about publicity. As a matter of fact, he never heard of Mr. Meese, did not know who he was even when he subsequently called him. He says you arranged everything.

Mr. **BARRACK**. That is correct, I did arrange everything.

Senator **METZENBAUM**. Was it you who was concerned about the publicity?

Mr. **BARRACK**. My reading of the memorandum is that my position was that the trust raises more problems. There was no need for the trust. I believe that was absolutely my position. That was the reason that Mr. Meese was involved at this point in time. There was a decision that needed to be made on the structure of the transaction. As far as I was concerned, there was no need for a trust to be implemented, because it was an arm's length transation. The Howards were perfectly willing to buy the house. They had no idea who Mr. Meese was. And to tell you the truth, I thought it was of no significance.

Senator **METZENBAUM**. But somebody is proposing that we make it a secret matter. Is that fair to say?

Mr. **BARRACK**. No, Senator; I do not believe that is fair to say.

Senator **METZENBAUM**. What is a fair way? If not secret, what was it about avoiding publicity and creating a trusteeship and at the same time answer to me this point about the point with the buyer with the son to reside. Did Mr. Howard ever intend to reside?

Mr. **Barrack**. He intended to have his son reside.

Senator **Metzenbaum**. The note says buyer with son.

Mr. **Barrack**. I cannot address myself to Mr. Meese's note.

Senator **Metzenbaum**. Did the son ever reside there?

Mr. **Barrack**. To the best of my knowledge, he did not.

Senator **Metzenbaum**. Now, you are the one talking to Mr. Meese on the telephone August 18. You are relaying to Mr. Meese the opinions first of an official of Great American Federal, is that right?

Mr. **Barrack**. Yes, sir; that is correct.

Senator **Metzenbaum**. And Mr. Meese's former law partner, is that correct?

Mr. **Barrack**. Yes, Mr. Lee Knutson was present.

Senator **Metzenbaum**. Now, Mr. Barrack, Mr. Meese hardly knows you. Why is he talking about getting the opinion of the law partner, his bank, his friendly bank, why are you the person? Is there something special about you at this point that we do not quite understand?

Mr. **Barrack**. I do not think so. I think the reason is because I indicated to his lawyer that I was not prepared to go forward with the transaction were it to take that form, and I believe at that point in time his lawyer decided that Mr. Meese should be involved in the decision. Up until that point in time, to the best of my knowledge, Mr. Meese had nothing to do with the transaction, nor awareness of it.

Senator **Metzenbaum**. Why did he not call him? Knutson was his lawyer. Why did he not call him? Why did he come to you, almost a total stranger, and tell you about filtering one level of the transaction? How did that come about, Mr. Barrack? What is there about you?

Mr. **Barrack**. I cannot explain why he came to me. I assume it was in response to his lawyer's inquiry to him that there was a difficulty with the transaction the way that it had been proposed by one of the other participants, and that I was unwilling to go forward, and sought Mr. Meese's counsel on how they suggested they go forward, and Mr. Meese suggested there be no trust.

Senator **Metzenbaum**. Who was going to be the trustee, if there was going to be any?

Mr. **Barrack**. I never discussed that because I was not willing.

Senator **Metzenbaum**. What do the notes "Lee as trustee" mean? Lee is Lee Knutson, Meese's former law partner?

Mr. **Barrack**. Yes, Senator, that is right.

Senator **Metzenbaum**. You must have discussed something about a compromise.

Mr. **Barrack**. No, Senator; I was not willing to compromise and I actually had no discussion with regard to that.

Senator **Metzenbaum**. Why did Mr. Meese if you know—I cannot ask you why he did it, but how do you explain compromise—Lee as trustee?

Mr. **Barrack**. I have no explanation for that.

Senator **Metzenbaum**. Did he just think of it himself and write it without discussing it with you?

Mr. **Barrack**. Only Mr. Meese can answer that.

Senator **Metzenbaum**. Mr. Meese made a note about Irv Howard being a contractor and builder following by "Orange County, San Diego."

What does that mean?

Mr. **Barrack**. I do not know what Mr. Meese meant by it, but Mr. Howard was a contractor and builder and had resided for a substantial period of time in Orange County.

Senator **Metzenbaum**. What about San Diego?

Mr. **Barrack**. I do not believe that he resided in San Diego. I do not believe at that time he conducted business in San Diego.

Senator **Metzenbaum**. As a matter of fact, he never built at all in San Diego.

Mr. **Barrack**. I have no knowledge. I do not believe that he did.

Senator **Metzenbaum**. Now, on the note, still referring back to the same note, are these figures of $300,000 and following that $240,000 loan, $60,000 downpayment—in his deposition, Mr. Howard states the following:

> Question: After you saw the home, how long was it before you actually made an offer for the home?
>
> Answer: It was approximately 2 days or 3 days. It wasn't very long.

Now, Mr. Barrack, one of Mr. Meese's handwritten notes, dated August 12, refers to getting a key for the house.

Would it be accurate to assume that you and Mr. Howard looked at the house somewhere between August 12 and your phone conversation with Mr. Meese on August 18?

Mr. **Barrack**. I do not believe it is accurate, Senator, but I do not remember the date exactly, and I have not had an opportunity to prepare these dates so I would not want to mislead by saying it is true or it is not true. It is my recollection that it is the 12th.

Senator **Metzenbaum**. I guess you said that Pendleton James in the second week of August first mentioned this to you. Does that sort of tie in with the August 12 comment?

Mr. **Barrack**. The answer to the question is yes, it was the second week of August that Pendleton James talked to me, but, Senator, I do not recall the first date of the meeting.

Senator **Metzenbaum**. Now, in your phone conversation with Mr. Meese, there is discussion of $300,000, as has been pointed out previously.

Was that what Mr. Howard was offering for the house?

Mr. **Barrack**. No, sir—well, it was what I had proposed as the purchase price based on a scenario somewhat complicated by our discussions and negotiations with regard to financing. The position that Mr. Knutson had taken from the beginning was that the purchase price was basically $330,000, or that the house could be purchased separately without the contiguous lot for $300,000. I had taken the position from the beginning that we would not be prepared to exceed $300,000 for both the house and the contiguous lot. As the negotiations transpired, Mr. Knutson was unwilling to move off the purchase price required to clear all closing costs in the transaction which brought the purchase price back to the $307,500 figure, as best I recall.

Senator **Metzenbaum**. So the purchase price was $307,500?

Mr. **Barrack**. Yes, Senator; I believe that was the final price.

Senator **Metzenbaum**. Now, Mr. Meese indicated that there was some dickering for some 10 days to 2 weeks but, according to Mr. Howard, there was no dickering over the price, that one offer of $307,500 was made and accepted. Is that your recollection?

Mr. **Barrack**. No, sir; that is not my recollection. I believe Mr. Howard is correct at the level of his involvement, there was never any dickering over the price. At the level of my involvement, there was quite an amount of discussion about financing and the price.

Senator **Metzenbaum**. You talked about $300,000 on August 18. On August 19, you go to the point of signing papers. On August 21, Mr. Meese and Mrs. Meese have signed an agreement and that does not sound like there is much dickering. It sounds as if the price is adjusted.

How do you explain all that?

Mr. **Barrack**. It is difficult to explain all of that. But I will attempt to do it one at a time.

I believe the execution of the Meeses of the documents on the 25th—Senator, is that the date you said?

Senator **Metzenbaum**. The 21st, finalized on the 25th, but they executed the papers on the 21st.

Mr. **Barrack**. Was as the result of Knutson's desire to have these papers executed while they were in San Diego. As I recall, they were in San Diego for some other matter, and that is why Mr. Knutson had those documents documented. In fact, the final negotiations on the transaction were not completed until almost the end of the transaction because the structure of the financing and the total purchase price remained until, I believe, the last week of the transaction.

Senator **Metzenbaum**. Now, let me tell you, Mr. Barrack, that Mr. Meese testified on Friday to the following effect:

"Mr. **Meese**. I do not think we were willing to sell our home for the $300,000. I believe we wanted more money, and I believe we ultimately settled for $307,500."

Later I returned to this question and the following exchange resulted:

"You said that you were not willing to take the $300,000. You wound up taking $307,500. How much more time did you negotiate in connection with the price?

"Mr. **Meese**. I think it probably went another 10 days or 2 weeks. All I know is that the whole thing finally was settled, I believe, around September 2, but the deed of trust would probably show that."

I then said, "So it took about 10 days or 2 weeks of negotiations and you finally get them up to the $307,500, is that right?

"Mr. **Meese**. That is the amount that was finally settled on. I do not remember what date during that period we actually settled on that amount."

Mr. Howard said: "And what was the offer you made for the home? We made $307,000. That is what we bought it for."

Now, I do not quite follow. Mr. Meese is telling us there was a $300,000 figure and 10 days to 2 weeks later the price becomes three zero seven five. Mr. Howard says they made one offer of $307,500. We also know that it did not take 10 days to 2 weeks. The matter was signed by the Meeses the following day, and the transaction was, I guess, in escrow or closed a couple of days later.

Now, how do you explain all of that? How do you reconcile 10 days to 2 weeks, $307,500? I am confused. What are the facts?

Mr. **Barrack**. I am confused, too. Could we go one at a time and I would be happy to address them.

Senator **Metzenbaum**. Explain to me how, if you can, how Mr. Meese said that it took 10 days to 2 weeks to get the price from $300,000 to $307,500, and yet the fact is the day after those notes were made, 3 days later, Mr. and Mrs. Meese signed the papers, and Mrs. Meese was not there, they were signed by, I think, Mr. Knutson, who held the power of attorney from her?

Mr. **Barrack**. My recollection, Senator, is that Mr. Meese's recollection on the facts is correct, that in fact the $307,500 purchase price was not agreed upon by me, I believe, until the very end of the transaction. The execution of the documents——

Senator **Metzenbaum**. Wait. Let me get that clear.

You were going forward, drawing the papers on the deal, knowing it was going to be a deal but the price had not yet been agreed upon?

Mr. **Barrack**. I thought the price had been agreed upon at $300,000. The negotiations continued, Senator, is what I am saying.

Senator **Metzenbaum**. Go ahead.

Mr. **Barrack**. At the time that the price had been agreed upon at $300,000, the financing structure of the underlying financing had just been locked in. There were some components of it, I think, that remained to be settled by Great American. However, at the time when they came back with the total package, with what the financing was, what the total all end closing costs would be, what kind of financing package that they were prepared to provide, we had another round of discussions with regard to the ultimate purchase price which then raised the price to $307,500, and in which I extracted, I believe, another 75 basis points off the interest rate of the loan and took it, I believe, to a 25- or 30-year amortization. I do not recall the exact negotiations sequence, but it was a flexible living negotiation that was not completed until the end of the deal.

Senator **Metzenbaum**. Is it customary that mortgage rates run about three points lower than the prime rate?

Mr. **Barrack**. Senator, I could not answer.

Senator **Metzenbaum**. You are in the real estate business. Do you really think you can get long-term mortgages for something less than prime, three points less?

Mr. **Barrack**. Senator, you have to give me the rest of the facts. It depends on what the underlying financing on the property is at the time, what the interest rate on the underlying financing is at the time, what the term is at the time and the motivation of the lender.

Senator **Metzenbaum**. I will ask you about this one.

You got a loan at 11 percent. The going prime rate at that time was around 14 or a little bit better. You got a longer term, you said. Was there some special motivation of the lender or some special consideration given?

Mr. **Barrack**. Senator, I will give you my understanding of finance which may not be as dramatic as you would like, but I think it is fairly accurate.

No. 1, on the Meese house there was an underlying first trust deed of, I believe, $104,000. That underlying first trust deed had a promissory note, accruing interest at, I believe, 8½ percent on a 30-year term. At that point in time, if you recall, the prime had peaked at about 21 percent, and at the time of this transaction, was climbing down at the rate of about a point a month, and I think it had been at 13 or 14 percent. The prime rate in first mortgages on housing is usually not the pivotal rate. It is the Federal discount rate. The Federal discount rate at that point in time was below the prime rate, but the pivotal factor was that savings and loan industry in California at that time was relying on secondary markets selling of their mortgages, and an 8½ percent $104,000 first mortgage was a tremendous liability.

So what I convinced Great American to do was to blend the rate on the financing. In other words, to negotiate with me an interest rate based on a new loan of $240,000, on a short-term, 5-year term, and relieve them of 30-year term, 8½ percent interest rate which was way under market at the time of the loan.

Senator **Metzenbaum**. Is not Great American one of the major banks that does not permit any assumable mortgages, and is not Mr. Luce, chairman of the board of that bank, one of the outstanding spokespersons against assumable mortgages? Is that not a fact?

Mr. **Barrack**. I do not know that Mr. Luce is one of the most outstanding spokesmen against assumable mortgages, Senator, but I can tell you I had a difficult time in allowing me to make that loan assumable. That was not the point, that when the purchase price increased, that the interest rate and the assumable loan became an issue——

Senator **Metzenbaum**. The 8 percent loan could never have been assumed by the buyer, and they knew for certain that Mr. Meese was going to have to sell, and he was living in Washington at the time, and the bank did not have any reason to be concerned about 8 percent 30-year loan since they knew it had to be paid off did they not?

Mr. **Barrack**. Senator, I do not agree with your interpretation of the facts although that may be correct. I just do not know.

Senator **Metzenbaum**. Tell me where I am wrong.

Mr. **Barrack**. I do not know, first of all, that 8½ percent loan could not be assumed in a wraparound mortgage by a subsequent purchaser. In California, it is very common if you want to preserve in fact the underlying first trust deed to prepare first trust deed behind it, which impacts the vesting under the first trust deed.

Senator **Metzenbaum**. At that time there were four mortgages on, and that would have been difficult, to provide a fifth wraparound, would it not?

Mr. **Barrack**. It has to be very creative.

Senator **Metzenbaum**. That is right.

At the bottom of Mr Meese's handwritten note is a notation "Jim Schmidt, 11:40 a.m., will proceed with sale without trust arrangement, will pay off loans and send us check for the balance. Knutson notified via receptionist." On August 19, after your conversation with Mr. Meese, the offer was agreed to, or was it not? Was the price still being negotiated on August 19?

Mr. BARRACK. Senator, as I have stated, the price in my mind had been agreed upon. Toward the end of the transaction, the price was increased on me, in the negotiation, and the negotiations continued, I believe that at that point in time, we had had a deal for $300,000, and at the end of the transaction, the very components of the transaction changed.

Senator METZENBAUM. Mr. Barrack, how long have you been in the real estate business?

Mr. BARRACK. Since 1976.

Senator METZENBAUM. Tell me one other deal where you thought you had a deal, were going forward with the paperwork and in the middle of it you permitted the price to be increased 2½ percent.

Mr. BARRACK. Senator, it may comment on my ability in the real estate market and most of the transactions I enter occur that way.

Senator METZENBAUM. Renegotiate the price while the deal is being finalized?

Mr. BARRACK. The components of the deal keep changing as you define them in more finite and finite terms, and everything focuses. The flexibility of the transaction becomes very dramatic.

Senator METZENBAUM. Mr. Barrack, could you relate to the committee whether you had had any business relations up to August 1982 with Great American Savings and Loan?

Mr. BARRACK. Senator, I believe I had a savings account at their Newport Beach branch in——

Senator METZENBAUM. You were not an important customer to them?

Mr. BARRACK. No; I was not. I had borrowed, in the real estate development business, they had placed a loan on one of our projects, I think in 1977.

Senator METZENBAUM. Now you then arranged for Mr. Howard to finance it through Great American, is that correct?

Mr. BARRACK. Yes, sir; that is correct.

Senator METZENBAUM. When you made this arrangement for Mr. Howard to get the loan, did you provide a financial statement for Mr. Howard? Was an application made out for him? Was there an appraisal of the home? Were any of the normal things done that normal people do when they try to get a real estate mortgage? Do any of those things occur? You just walk in and said, OK, whatever you say to Tom, you get $200,000 loan for Mr. Howard, who was never met before and he lives 300 miles away from us. How did it work? I am impressed with your ability to work this out so well.

Mr. BARRACK. Senator, first, I don't recall what documentation was required in the processing of the loan. I have not had any of the files with regard to the transaction nor have I had an opportunity to review anybody else's files with regard to this transaction. So I obviously cannot give you an answer to the loan application.

My understanding was that there very definitely was an appraisal in place at the time that the negotiations were taking place, and my familiarity with the California savings and loan industry would indicate that they had an appraisal probably 80 percent on loan to value ratio in order to substantiate that $240,000 loan.

Senator **Metzenbaum**. What impresses me is that, I have been a banker, and I have never remembered somebody giving a loan, and I guess there would be 80 percent, without making an application, without a credit check on him or her, and you were able to do all of this as a total stranger to the bank, and you get the feeling that either you had a halo around your head when you walked in the door somebody had put their special blessing on you. That is what I am having difficulty with, Mr. Barrack. How did it come that they treated you so well, that Mr. Howard did not have to make any application, have any credit check and that they new immediately could have $200,000 for a man by the name of Howard?

Mr. **Barrack**. Senator, I believe there is no question the bank was absolutely motivated. They obviously had a situation on their hands that they wanted to make a deal.

With regard to the credibility of the buyer, etc., I think it is fairly common in banking practices today when banks have an asset on their hands that they are anxious to bring up the current rates, that someone who walks in with cash, especially at that point in time, could dictate a fairly strong transaction. That is exactly what happens. In the marketplace at that point in time there were many deals being made but they were all being made by heavy seller financing. So the tradeoff and structure of this transaction was the ability to come in with a 20-percent down payment, and I believe the bank absolutely was cooperative. I felt I was taking advantage of them and loved it every minute.

Senator **Metzenbaum**. Mr. Barrack, the records show that Mr. Meese personally signed the papers in San Diego on August 21 and provided a power of attorney for his wife. Were you involved in the preparation of the papers at all?

Mr. **Barrack**. No, Senator; I was not.

Senator **Metzenbaum**. Did you have knowledge of how and where and when Mr. Howard signed his papers?

Mr. **Barrack**. Yes, Senator; I believe that the loan papers and the purchase agreement—let me take the component separately.

To the best of my recollection the purchase agreement was signed in the office of Mr. Knutson in La Mesa, CA, that most of the loan documents were signed at the offices of Great American and that a couple of the final loan documents were executed by Howard at their home.

Senator **Metzenbaum**. Were you present when the papers were signed?

Mr. **Barrack**. Senator, I do not remember. I believe I was present when the purchase agreement was signed, and I don't recall whether I was present during any of the other transactions.

Senator **Metzenbaum**. Do you remember when that was?

Mr. **Barrack**. No, Senator, I do not.

Senator **Metzenbaum**. Was it right after the August 18 phone call?

Mr. **Barrack**. Senator, I honestly do not recall.

Senator **Metzenbaum**. Could it have been before the phone call?

Mr. **Barrack**. I do not believe so, but I just do not recall when it was.

Senator **Metzenbaum**. Mr. Barrack, you have been involved in a lot of real estate sales and purchases. You are saying to us that the reason the bank moved so rapidly on this matter and that the paper work was done so rapidly is because the bank wanted to get out of its previous mortgage to Mr. Meese and that the papers—the discussion occurred on August 18 and the first papers drawn on August 19 and by August 25 the papers of the mortgage were ready and signed on August 27 by Mr. Howard, and $246,000 assumable mortgage at 11 percent is granted virtually with no delay for the home with someone who has never done any banking with the firm and lives 300 miles away.

Would you say it is a little unusual?

Mr. **Barrack**. No, sir; I didn't think it was unusual at all.

Senator **Metzenbaum**. You arranged all of that, did you?

Mr. **Barrack**. If we take the component parts again, I can answer it more accurately. I arranged the transaction. I negotiated the financing.

Senator **Metzenbaum**. What didn't you do?

Mr. **Barrack**. I did most of it.

Senator **Metzenbaum**. You did most of it?

Mr. **Barrack**. Yes, sir.

Senator **Metzenbaum**. Now, in a letter to this committee dated February 21, 1984, Mr. Howard stated the following:

> I sold the house in the spring of 1983 for $275,000. I sold the house because my personal plans had changed. The economy had worsened. An adjoining lot was not buildable in the near future.

That is Mr. Howard's letter.

Then in another letter to the committee Mr. Howard says the following on February 24, which is 3 days later. This is in answer to questions.

> Question. Please explain what you intended to do with the vacant lot.
>
> Answer. I purchased the property with the expectation that the lot might be built on or sold separately at sometime in the future should I desire to do so.
>
> Question. Why was the lot not buildable in the future?
>
> Answer. It was my belief that the economics and practicalities of building on the lot was not feasible at that time.

Mr. Barrack, as far as your knowledge of the situation would you say that these are accurate representations of what occurred to Mr. Howard?

Mr. **Barrack**. Senator, I can say based on my knowledge that it is accurate in that the economy continued to turn down in residential housing at that time, and I am aware of the problems which they had on a contiguous lot, and if he indicates that his personal plans had changed, I would assume what he is saying is correct.

Senator **Metzenbaum**. When Mr. Howard was deposed last Saturday, he related a slightly different story. It has already been established that the home was eventually resold for $275,000, representing a loss of $32,500, plus interest on the loan of about $20,000, for a total loss of about $50,000.

I will now read you from the deposition of Mr. Howard:

> Question. Well, I guess what I am asking is would you agree that your loss on the home was in the vicinity of $50,000?
>
> Answer. Approximately.

Now, I think you testified earlier that the loss was in the vicinity of $50,000 or $60,000, is that right, and Mr. Howard had suffered that kind of loss?

Mr. **Barrack**. No, Senator, I believe I testified earlier I don't know how you calculate losses. If you ask me to calculate exact loss without knowing the numbers in front of me, I was unable——

Senator **Metzenbaum**. I do not mean to tie you down on exact numbers. You are talking about Mr. Howard's loss, right?

Mr. **Barrack**. Mr. Howard's or Mr. Elkin's? I am not sure.

Senator **Metzenbaum**:

> Question. Has anyone ever been reimbursed in any way for that loan?
>
> Answer. For the loss—when you say anyone, who are you referring to anyone?
>
> Question. Anyone.
>
> Answer. I went into about approximately week or two weeks after I purchased that house with Ted Elkin and my son as a partnership and they reimbursed. Ted Elkin reimbursed me and my son reimbursed me.
>
> Question. Could you explain that a little more. I am not quite sure I understand. In other words you bought the home?
>
> Answer. Yes.
>
> Question. Within a short period of time you formed a partnership?
>
> Answer. Now let us say one thing. I bought the home with the purpose of putting my son into a deal.
>
> Question. I understand.
>
> Answer. O.K. At the time that I purchased the home I talked to Mr. Barrack. He said that he was going elsewhere. And Mr. Elkin—could I do him a favor, and I says, Tommy, him and my son can do this house. So that is when Ted Elkin and my son got involved in the house.
>
> Question. You just said one thing. You said that Mr. Barrack said he was going elsewhere.
>
> Answer. Well now believe me I never knew that Tom Barrack was going to Washington until after the fact that Tom Barrack went to Washington.
>
> Question. I understand.
>
> Answer. He said that Ted Elkin was a very good friend. Could I do him a favor and teach him the construction business. My son is a very avid construction person. I said, yes, my son can teach him, you know. So then now a week or approximately two weeks later we went into a deal where they could take the house and try to do something with it.
>
> Question. Are you saying that originally Barrack was going to go in partnership with you?
>
> Answer. No.
>
> Question. I thought that is what you meant when you said he was going elsewhere.
>
> Answer. No.
>
> Question. They reimbursed you for the amount of money you lost?
>
> Answer. Yes.
>
> Question. In other words the total amount—in other words let me understand this, you were saying you did not take the loss. It was your son and Ted Elkin?
>
> Answer. Right.
>
> Question. So in other words at that point you were owner in name only. After you had first bought the house, you in essence had turned it over to them and from that point on—
>
> Answer. After a period of time.
>
> Question. They gave you the money back?
>
> Answer. Yes.
>
> Question. Prior to any sale of the home so when—
>
> Answer. Prior.
>
> Question. So when the sale came at a loss they were the ones that absorbed the loss?
>
> Answer. Right.

Mr. Howard didn't lose the money; Mr. Elkin and Mr. Howard's son lost the money, is that right?

Mr. **Barrack**. Senator, that is the first time I heard the deposition. I can't tell you how they allocated the loss. I can tell you it was Mr. Elkin's cash down payment and it was Mr. Howard's liability on the note. How that was divided, I do not have any personal knowledge.

Senator **Metzenbaum**. Your relationship with Elkin is that he has been associated with you, been an aide to you; is that it?

Mr. **Barrack**. Yes, Senator. He has been a close friend and confidant for the last 5 or 6 years.

Senator **Metzenbaum**. And you previously said that he had no money? I think you said——

Mr. **Barrack**. Yes, Senator, that is correct.

Senator **Metzenbaum**. What was this partnership all about, do you know?

Mr. **Barrack**. Yes, sir; I do.

Senator **Metzenbaum**. Please tell us as far as your own involvement in it.

Mr. **Barrack**. Yes, sir.

Starting from—let me back up a little further than you might want to go, but I think it will add clarity to the situation.

In March 1980 I had sold a company in which I was the principal to another large developing company. At that time, took my existing executive staff with me, but moved into really corporate America in a more substantive form than we had been used to. In about June 1982, the operation that was currently being operated in Los Angeles reduced in size, and there was no need for most of the executive staff that was currently in place, including Mr. Elkin. At that point in time, I had arranged for the company with whom I was employed to pay all of the executives a minimum of 1 year's severance pay. They had been loyal and dedicated to me and I thought we owed them that. Mr. Elkin was not fortunate enough to be considered in that category. He had lived with myself and my family for the last 4 years, and he was a refugee from Eastern Europe. He had seen what could happen in my own circumstance from coming from a middle-class background and being able to achieve a reasonable amount of opportunity and fortune, and I was anxious to give him an opportunity to do it for himself.

In June 1982, I indicated to him that if he found a business he was interested in or investment opportunity in which he wanted to proceed, I would back him in that opportunity. In the course of the summer, we had looked at various transactions. When we came upon the Meese house, I initially thought it was a perfect transaction for him. One of the problems in the transaction was he would never qualify for $240,000 indebtedness. At first, I had thought that may not be a problem because I explained to you earlier I believed the downpayment in itself would be sufficient, but in fact it was a problem.

At this point in time, which was a period of 24 hours, I had had another transaction going on with Mr. Howard, and during the course of that, I explained the house situation, how I thought it was a good investment. He came into the transaction. When he was in the transaction, I asked him to allow Ted the opportunity to invest with him, that I had lent Elkin the money to participate, and would he work it out with Elkin. He agreed that he would. And they pursued it from that point of time.

Senator **Metzenbaum**. How much did you lend him?

Mr. **Barrack**. I lent him $70,000 at that time, I believe.

Senator **Metzenbaum**. And somebody suffered a loss of $50,000, $60,000 on this deal. Who lost it?

Mr. BARRACK. I believe it was Elkin who lost the money.

Senator METZENBAUM. That was from the $70,000 of your money that he had?

Mr. BARRACK. Yes, Senator, that is correct. It is the $70,000 of the money that I had loaned to him at that point in time and, subsequently, in January, January 14, 1983, I was fortunate enough to sell a piece of property that Mr. Elkin was very intimately related with, and I made a bonus to him of that money in January 1983 far before the house had ever been sold.

Senator METZENBAUM. You lent him $70,000 about the same time this deal is being made, is that it?

Mr. BARRACK. Yes, sir; that is correct.

Senator METZENBAUM. And he then loses—how much did he lose actually on the transaction?

Mr. BARRACK. Senator, I do not know because it is the same answer to the other question. I do not have the facts available.

Senator METZENBAUM. Is it fair to say somewhere around $50,000, maybe $60,000, somewhere in that area?

Mr. BARRACK. If you say it is, I assume for the sake of our discussion it is.

Senator METZENBAUM. At that point you loaned him the money, he loses the money, and he has no way to pay you back, and come the very first of next year you make a business deal and you say, I like you, I am allocating, how much of the bonus did you—profit did you allocate?

Mr. BARRACK. Senator, may I go back and clear the facts?

In January 1983, I gave him that bonus. That was far before the sale of the house. I made the bonus of the entire amount which I had lent him. It was not January 1984. In January 1983, I lent him the money at about the same time the transaction was being finalized on the Meese house. In January 1983, when I sold the property, I made him a bonus of the loan. I forgave the indebtedness. He did not sell the property until May 1983.

Senator METZENBAUM. All right. Let me get it straight.

You lent him $70,000 at the same time you put him into a business deal that he would make $70,000. That canceled, is that right?

Mr. BARRACK. Senator, I do not understand your question. Let me try and explain it. Perhaps I have not been clear.

At the same time that the Meese house transaction was being solidified, my initial thought was to have him buy it for his own account.

Senator METZENBAUM. OK.

Mr. BARRACK. I saw quickly that the bank would not agree to not having a substantive person on the loan. At the same time, I had another transaction going with Mr. Howard. I told Mr. Howard about the investment and Mr. Howard totally deferred to me with regard to the investment.

Senator METZENBAUM. I am not thinking of Howard. I am trying to keep Elkin straight.

Mr. BARRACK. This was, say, the end of August, beginning of September.

Senator METZENBAUM. 1983?

Mr. BARRACK. 1982.

Senator METZENBAUM. 1982?

Mr. BARRACK. Yes, sir.

In January of 1983, I forgave the indebtedness and credited that as a bonus to Mr. Elkin. That was his money. His participation with Mr. Howard at that point in time, I do not have the personal facts as to exactly the arrangement, but I am sure the money that was lost was Mr. Elkin's. Since my understanding of the transaction was Mr. Howard would take the liability on the $240,000 note, and Mr. Elkin and/or his—Mr. Howard's son—I am not sure how that transaction was structured—would be responsible for the cash.

Senator METZENBAUM. I am having a little difficulty following, but I think I understand you.

You lent him $70,000 in the middle of 1982, September 1982, about the time this deal is going through?

Mr. BARRACK. Yes.

Senator METZENBAUM. Three or four months later, you make it possible, you allocate a share of profits in a business deal of $70,000 to him, is that correct?

Mr. BARRACK. I granted him a bonus in compensation——

Senator METZENBAUM. You forgave the loan which was in exactly the same amount of money?

Mr. BARRACK. Yes, sir.

Senator METZENBAUM. Is that right?

Mr. BARRACK. Yes, sir.

Senator METZENBAUM. Do you take a deduction on your taxes for that $70,000 because you do not have the money? He got the bonus, is that right?

Mr. BARRACK. I do not know that I took a deduction or not.

Senator METZENBAUM. Well, reasonable to assume?

Mr. BARRACK. My taxes for that year have not been completed so I cannot answer that question.

Senator METZENBAUM. So, in the last analysis, indirectly Tom Barrack winds up taking the loss on the Meese home?

Mr. BARRACK. No, Senator; that is not correct. I had committed to Elkin to provide him with capital for investment starting with June 1982.

Senator METZENBAUM. With what?

Mr. BARRACK. To provide him with capital for his own investment since June 1982. We had looked at various transactions. This was an investment opportunity that I thought was viable for him, and I provided him with the capital. I thought it was a great deal. I thought he would make money. I thought Howard would make money, and I thought I would fulfill my moral obligation to him.

Senator METZENBAUM. I am sure you would not do this, but let us assume the worst, and I know you would not do this, but let us assume you would want to structure a deal so that you could work it out to get a man out of his home, any man, and you wanted to see to it that the loss in connection with that deal would be your loss, not his, and you would be accommodating him.

Would this kind of arrangement work out for that kind of situation?

Mr. BARRACK. I do not know if it would, Senator, because I have never thought of that. What I can tell you is very simple.

Had I wanted to buy the Meese house myself, I would have done it in an instant. I had no qualm with regard to purchasing it for myself. I was in a dispersal mode. I had various real estate properties that were in various points of sale myself, and it did not fit my business operation or my modus operandi at the time to figure out a way to have somebody move into a house, remodel it and fix it up. Was I responsible for the entire transaction? Absolutely, yes. Was the transaction entirely separated between Howard and Elkin and myself? No.

Senator METZENBAUM. Did Mr. Meese make any improvements on the home on August 28 and, if so, was that a condition of the sale?

Mr. BARRACK. I am sorry, Senator, I want to make sure I understand.

Did Mr. Meese make any improvements?

Senator METZENBAUM. On his home.

Mr BARRACK. He may have. I do not honestly recall whether he did or did not.

Senator METZENBAUM. Was there new carpeting? Did he agree to put in new carpeting?

Mr. BARRACK. I believe there was.

Senator METZENBAUM. He put that in?

Mr. BARRACK. I honestly do not recall so I cannot address the issue.

Senator METZENBAUM. Had the house just been painted and masonry work done on it?

Mr. BARRACK. There had been some masonry work, and I believe the inside of the house had been painted but not the outside.

Senator METZENBAUM. I believe you stated you were approached about the Meese home by Pendleton James, White House Personnel Director; is that correct?

Mr. BARRACK. I was approached about the house by Pendleton James, who was the former White House Personnel Director, yes.

Senator METZENBAUM. How long had you known Mr. James and describe your relationship with him?

Mr. BARRACK. I have known Mr. James for, I guess, over a dozen years. I had met him in Los Angeles. We had developed a close personal friendship through the years of 1976, 1977, 1978, and I had used Mr. James as executive recruiter to find candidates for my company. I had maintained that relationship with him through his work in the transition of the campaign and we remained very close friends throughout those years.

Senator METZENBAUM. Did you know James during the Nixon years?

Mr. BARRACK. No, sir; I did not.

Senator METZENBAUM. Sometime in the fall of 1982—

Mr. BARRACK. Through the Nixon years? I met him I believe in 1971 or 1972.

Senator METZENBAUM. Was he working for Nixon at that time?

Mr. BARRACK. No, sir; he had just returned.

Senator METZENBAUM. Sometime in the fall of 1982 you came to Washington to discuss a Government post, is that correct?

Mr. BARRACK Yes, sir; that is correct.

Senator METZENBAUM. When was that?

Mr. BARRACK. I believe it was in mid-September 1982.

Senator METZENBAUM. That would be about 2 weeks after the Meese deal was finalized?

Mr. BARRACK. Yes, sir; approximately.

Senator METZENBAUM. Who invited you?

Mr. BARRACK. Pen James did.

Senator METZENBAUM. How did Pen James invite you? He left the White House in July 31, 1982. How could he be inviting you to Washington for a position with the Government?

Mr. BARRACK. Well, Senator, since September 1980 Mr. James had been trying to recruit me into a position in the Administration which I was not at any of those points along the way willing to accept. We had had four or five specific meetings in September 1980, January—excuse me, September 1980, January 1981, February 1982, June 1982, and although Mr. James had left the White House, he was kind enough to arrange for me to see some of the personnel people in the President's personnel office.

Senator METZENBAUM. When were all of those meetings that you just mentioned—where?

Mr. BARRACK. I believe the first meeting in September was in California. I believe there was a meeting around the inauguration in Washington in Mr. Meese's transition office and there were two subsequent meetings in Mr. Meese's office in Washington—excuse me, in Mr. James' office in Washington.

Senator METZENBAUM. If you were in Mr. Meese's office, are you saying, did you err when you said Mr. Meese's office or were those meetings actually in Mr. Meese's office?

Mr. BARRACK. No, Senator; I had never had a meeting in Mr. Meese's office. They were both in Mr. James' office.

Senator METZENBAUM. Who did you meet with when you came to Washington and what was the nature of the discussions?

Mr. BARRACK. Well, initially I met with three or four of the associate directors of personnel who are responsible for various agency responsibilities. The nature of the discussion was really with regard to what kind of positions were available, what the commitment to a Government post might be. It was really kind of a look and see opportunity for me.

Senator METZENBAUM. Was Mr. Meese present at any of those meetings?

Mr. BARRACK. No, sir.

Senator METZENBAUM. Did you say hello to Mr. Meese while you were in Washington at that point?

Mr. BARRACK. I do not recall that I did, Senator. I do not think I did in September.

Senator METZENBAUM. Did you meet with any of Mr. Meese's assistants?

Mr. BARRACK. You would have to define who—I am not familiar enough to know who his assistants are.

Senator METZENBAUM. But you didn't see Mr. Meese at all 2 weeks after you bought his home—excuse me—arrange for the sale of his home?

Mr. BARRACK. Senator, I would have to refer to my notes. I do not believe that I saw him then.

Senator METZENBAUM. Did you talk with him on the phone?

Mr. BARRACK. Yes; I did.

Senator METZENBAUM. When? While you were in Washington or while you were in California or both?

Mr. **Barrack**. I believe it is when I was in California, but I am not sure when it was. But the substance of the conversation was really in the form of a thank you, and he is glad that it worked out in a mutually satisfactory way for the Howards and for him.

Senator **Metzenbaum**. And that was after the sale was consummated?

Mr. **Barrack**. Yes, Senator; it was.

Senator **Metzenbaum**. It is sometime between September 1 and September 15 when you came to Washington. Now, at that point did you indicate to him you were on your way into Washington, that you were thinking of taking a position with the Government?

Mr. **Barrack**. No, Senator; I at no time indicated to Mr. Meese then or any time prior to my joining the Government that I was leaving the private sector or had any interest in going to Washington.

Senator **Metzenbaum**. When did you know you were going to go to Washington and get a position?

Mr. **Barrack**. December 1, 1982.

Senator **Metzenbaum**. How do you account for the fact that Mr. Howard in his deposition said:

> Question. I understand.
>
> Answer. OK. At the time that I purchased the home I talked to Mr. Barrack. He said that he was going elsewhere.

He goes on to say:

> Well, believe me I never knew that Tom Barrack was going to Washington.

And after the fact—well, indicates that he knew you were going elsewhere, and is elsewhere Washington?

Mr. **Barrack**. I believe at that time, Senator, he could have inferred that elsewhere was Washington. I had been contemplating that as one of the alternatives. I had also been contemplating moving my family and business operation to New York at that point in time.

Senator **Metzenbaum**. Let me ask you, let me be very candid with you. I think you were trying to answer very frankly If a person were interested in getting a good position in Washington in this Administration, is it your opinion that it would be a good move on his part to help the White House's counselor get rid of his home, one who is as prominently known and regarded as Mr. Meese? If somebody wanted to get a position in the White House, do you think that would be a pretty smart move for him to make? It had some appearance, I am sure you can appreciate that, Mr. Barrack. You are an intelligent man. You helped the man get rid of his home. Mr. Elkin, who is an associate of yours, winds up with a bonus from you of $70,000 or something like that and then loses something in that area on Mr. Meese's home, and shortly thereafter you come to Washington and they look around to find a place for you here. Now you are intelligent enough to understand that it has some of the indicia of a relationship that bears the closest scrutiny.

I just wonder whether you can tell us more about how you got the job with the Reagan administration.

Mr. **Barrack**. Senator, first of all I would say if I were giving advice on how somebody wanted to come to Washington, I would say if they wanted to make sure they did not come to Washington, I would buy somebody's house or arrange to buy somebody's house like that.

The way my job came about in Washington was really very simple, and perhaps the explanation is based on still my own naivete of how the process works. But for years Mr. James and I had discussed the problem in the governmental process of attracting high quality, well-qualified personnel to come and contribute something to the system. It had been a constant topic which he and I had discussed for a dozen years.

From the beginning of his tenure in the administration, he had attempted to recruit me for jobs, and quite honestly in my mind I always thought that the difficult problem was attracting someone who had at least, ostensibly my managerial skills to come. It was a privilege and honor, and something I was very happy and honored to do.

However, I did not view it as something that took a great amount of difficulty or effort. The transaction on the house was initially my response to a close friend who said can you help?

The secondary effect of this, I went, I looked, I saw an opportunity for two of my close friends who I was willing to back and sponsor, and I provided it for him. It absolutely didn't work out.

In hindsight would I have done it again? Absolutely, yes. In my belief did it have anything to do with me going to Washington in the capacity that I was in, which was secretarial appointments, absolutely not. Did Mr. Meese ever talk to me about a job? Absolutely not. Would I ever impose upon his stature as a person or figure ever to discuss it with him? Absolutely not. That is the honest truth.

Senator METZENBAUM. Let me read you the Washington Post article by Mr. Charles Babcock, October 3, 1983:

> Barrack served as a Deputy Under Secretary of Interior for the first three months of this year. Then he moved to the Commerce Department where he was expected to be nominated as Assistant Secretary for Trade Development and to head an interagency Task Force on Coal Exports. But in June he left the Government abruptly to return to California. White House personnel officer Joseph Ryan said yesterday he recalled Barrack was recommended for an Administration job last fall by E. Pendleton James who headed the Personnel Office and knew Barrack in California. After a round of interviews with Cabinet officials Ryan recalled it was decided that Barrack would go to the Commerce Department, but there were no openings there at the time so Barrack joined Watt.
>
> Barrack left Washington because he got a good offer to return to private business.

In another article on October 8—I am skipping part of it, it goes on to recite:

> The Interior Department spokesman said recently that Barrack traveled often with Watt, but had no definite duties. A source familiar with Barrack's work at the Interior Department said he worked on policy outreach and with the interest groups.

Mr. Barrack, this seems to suggest that a lot of people were shopping around to find a place for you in the administration. It is a little difficult for me to believe that with all this activity that Mr. Meese was not aware of your interest in Government service until after you were selected, and he did know about your help in arranging the sale of his home, but you were saying he had no idea, no knowledge at all about you obtaining a position with the Government?

Mr. **Barrack**. Senator, I cannot say what knowledge he had or he did not have. What I can say is I at no time had a discussion with Mr. Meese about my leaving the private sector and going to Washington or a position or anything in that regard, and to the best of my knowledge he was not aware I was in Washington until sometime after I had taken the position at the Department of the Interior.

Senator **Metzenbaum**. What were your duties at Interior?

Mr. **Barrack**. My duties at Interior initially were to try and restructure the Outreach Program for Secretary Watt in an effort to try and improve his liaison with the various interest groups, some of which were hostile at that point in time.

Senator **Metzenbaum**. Why didn't you accept the nomination? You had a nomination to Commerce. Why didn't you accept that nomination?

Mr. **Barrack**. Why didn't I accept?

Senator **Metzenbaum**. The nomination at Commerce.

Mr. **Barrack**. Well, Senator, I never received a nomination at Commerce. When I accepted the position with Secretary Watt, I indicated to him that although I had complete respect for him as an individual and person and administrator that my true abilities probably were better directed in a line job, so the position at Interior was one in which he knew that were in line—were a line opportunity to arise in the future there or someplace else, I probably would go. The position at Commerce was offered to me as a result of the Under Secretary and the Secretary's desire at Commerce, based on one of my initial interviews, to have me fill a spot that was opening up in February. I went over as a consultant. I was told that I would be the Commerce's candidate for the position, but there were various clearances and processes that had to take place before my formal nomination would be effectuated, and in fact I never received the nomination.

Senator **Metzenbaum**. You withdrew and went back to California?

Mr. **Barrack**. Senator, I withdrew my name from consideration, and I returned eventually to California, yes.

Senator **Metzenbaum**. Was there any problem about getting some of your records together in order to get the nomination?

Mr. **Barrack**. There was a continual problem in getting my records together, yes, sir. With regard to what aspect of my records are you talking?

Senator **Metzenbaum**. I do not know this to be the fact, but there is some suggestion that your records were all destroyed in a fire. I am not saying that is a fact. I am just asking you what are the facts.

Mr. **Barrack**. Senator, I think whoever you got that information from is on the verge of irresponsible.

Senator **Metzenbaum**. I am not making that as a charge or anything. I just heard some comment to that effect. I am asking. You say that is not the case?

Mr. **Barrack**. No, Senator; it is not.

Senator **Metzenbaum**. That is good enough for me.

There has been previous testimony about a previous offer for the Meese home that got as far as the escrow stage and then was withdrawn. It was made by a man by the name of Gavin Herbert. Do you know Mr. Herbert?

Mr. BARRACK. No, Senator; I do not know him personally.

Senator METZENBAUM. On February 28, 1983, in conjunction with your pending appointment to the Department of Commerce, you submitted a detailed financial disclosure statement to the Office of Government Ethics. On page 12 you disclose that you paid a promissory note at 9 percent interest in January 1983 to Howco Construction Co. of Santa Ynez, CA, in an amount in excess of $250,000.

Who is the principal owner of Howco Construction?

Mr. BARRACK. Irvin Howard.

Senator METZENBAUM. He is the man who bought the home?

Mr. BARRACK. Yes, sir; that is correct.

Senator METZENBAUM. Was Mr. Elkin involved in that particular transaction? Howco was remodeling a home that you owned?

Mr. BARRACK. Yes, Senator.

Senator METZENBAUM. They started in December 1980, I think it was?

Mr. BARRACK. Correct.

Senator METZENBAUM. I think the price for remodeling costs were $645,000. But the payments, according to the way I read it, were only about $485,000.

Mr. BARRACK. I believe that is correct, yes.

Senator METZENBAUM. Tell us the whole story about that, the transaction. Tell us also what involvement, if any, Elkin had in that deal.

Mr. BARRACK. In December 1980, I purchased a property in Holmby Hills, CA, which was a 1928 Mediterranean home of very special architectural style. The home had not been touched since 1928, nor had any improvements with regard to any of the exterior components been implemented in any point in time between 1928 and the time that I bought it.

It was a fairly substantial job. In December 1980, I hired Howco to implement the renovation work, which was very difficult to both define and to bid. The renovation work continued for 2 years or so, 18 months to 24 months. And I had some difficulty in selling the house. We had not decided whether we were going to reside in the house or sell it. I had made periodic payments to Howco with the understanding that, were I to maintain the house for my own account, that I would make him periodic payments. Were the house to sell, I would pay him a lump sum on the sale.

In effect, the house did sell once. As real estate transactions go in California, the buyer immediately went into bankruptcy. It took me about 7 months to withdraw the house from bankruptcy. Thereafter, within the next 2 months, I sold the house once again. The house closed on January 14, 1983, to an unrelated third-party purchaser. And on January 14, 1983, I settled my account with Mr. Howard and paid him $300,000.

Senator METZENBAUM. The cost of doing the repairs was less than the original contract price?

Mr. BARRACK. I think the cost of doing the repairs themselves may have been more, but there were various items which I paid directly. I think the total amount that was paid to Howco was $500,000, around $500,000.

Senator METZENBAUM. Since last September, when articles regarding the sale of the Meese home and your subsequent involvement began appearing in the newspapers, would you be good enough to relate to the committee any and all conversations, meetings, other contacts you had with the following persons? And that, of course, would include today, last night, the last several days.

Mr. BARRACK. Yes, sir.

Senator METZENBAUM. Edwin Meese III.

Mr. BARRACK. I never had a discussion with Mr. Meese with regard to this subject.

Senator METZENBAUM. Have you talked with him in the last several weeks?

Mr. BARRACK. No, sir; I have not.

Senator METZENBAUM. Irv Howard?

Mr. BARRACK. Yes, sir, I have had discussions with regard to the topic with Mr. Howard. It has severely impinged our friendship. I have tried to calm him down with regard to the specificity of this proceeding. We have discussed the topic. Our discussion evolved around my advice to him of doing one simple thing, and that is telling the truth.

Senator METZENBAUM. Fred Fielding?

Mr. BARRACK. I never spoke with Mr. Fielding.

Senator METZENBAUM. Do you know who Mr. Fielding is?

Mr. BARRACK. Yes, Senator, I know who he is.

Senator METZENBAUM. Ted Elkin?

Mr. BARRACK. Yes, Senator; I have had the same conversation with Mr. Elkin that I have had with Mr. Howard, various conversations since the beginning of the publicity. Prior to this transaction, he knew I was coming, and we had the same discussion.

Senator METZENBAUM. Have you had any discussions with White House personnel or Justice Department personnel within the last several weeks?

Mr. BARRACK. No, Senator; I have not.

Senator METZENBAUM. How about with Pendleton James?

Mr. BARRACK. Yes, Senator; I have.

Senator METZENBAUM. What were those concerning?

Mr. BARRACK. I have seen Mr. James on three or four separate occasions over the last few months. We had discussed the publicity and both of our misgivings and bad feelings about the predicament that Mr. Howard has been placed in. With regard to this testimony, we had the same discussion. He advised me to do one simple thing, tell the truth.

Senator METZENBAUM. Newspapers began writing about this transaction as far back as last September. I know that there has been a rather vigorous effort on the part of some persons in the media to reach you in order to explain this entire transaction. Do you want to say why you have not seen fit to explain it prior to today?

Mr. BARRACK. Senator, I think I have explained the components of the transaction which were asked of me. Personally, my hesitation to talk to the press is simply as a result of a lack of experience that I have in talking to the press. I am aware that they are doing their job and——

Excuse me, Senator, I would like to go back and clarify one answer. I have not spoken with Fred Fielding. I did have a conversation with Larry Garrett in Mr. Fielding's office.

Senator METZENBAUM. When was that?

Mr. BARRACK. I had a conversation with him yesterday with regard to the scheduling of the time of this proceeding. And I had two other conversations with him previous to that.

Senator METZENBAUM. When were those?

Mr. BARRACK. I had several conversations, actually.

Senator METZENBAUM. When were those?

Mr. BARRACK. Those were all in the course of the last 4 or 5 days. The topic in all the circumstances but one was with regard to scheduling of the letters and then subsequently of my appearance here today. The one substantive tone of the conversation was he asked me point blank did I ever have any discussions with Mr. Meese with regard to an appointment in Washington, and I answered the question no.

Senator METZENBAUM. I have nothing further of this witness, Mr. Chairman.

The CHAIRMAN. Thank you. The distinguished Senator from Nevada.

Senator LAXALT. Mr. Barrack, I would like to sum up, if I can, your testimony on a bottom-line basis. As I understand it, prior to the real estate transaction in California, you did not know Mr. Meese at all.

Mr. BARRACK. Yes, Senator; that is correct.

Senator LAXALT. And the matter came to your attention because of a phone call made to you by Pen James, a friend of long standing.

Mr. BARRACK. Yes, Senator; that is correct.

Senator LAXALT. It was on this basis that you looked into the transaction and decided that this would be a worthwhile opportunity for two of your friends.

Mr. BARRACK. Yes, sir; that is true.

Senator LAXALT. You thought of Mr. Elkin, who was a refugee and who apparently was having difficulties financially, and you felt that this might be a good opportunity for him to make a dollar or two.

Mr. BARRACK. Yes, Senator.

Senator LAXALT. And at the same time, you decided that Mr. Howard should be involved as well.

Mr. BARRACK. Yes, sir.

Senator LAXALT. This eventually resulted in a transaction in which the stated price, $300,000, before closing, was raised to $307,500. Right?

Mr. BARRACK. Yes, sir.

Senator LAXALT. If I understand the thrust of your testimony, that was because of some rather hard bargaining somewhere, either with Mr. Meese's law partner or with Mr. Meese directly. Which was it?

Mr. BARRACK. It was Mr. Meese's law partner.

Senator LAXALT. So that the raise in price was just the result of honest, difficult negotiations.

Mr. BARRACK. Yes, sir.

Senator LAXALT. And in respect to the interest rate that was finally achieved, which Senator Metzenbaum indicated might be somewhat unusual, the fact of the matter is that that whole package had been renegotiated. Is that not true?

Mr. BARRACK. Yes, Senator; that is correct.

Senator LAXALT. And you took out the original 30 year loan with inferior interest rates in relation to the market at the time.

Mr. BARRACK. Yes, sir.

Senator LAXALT. Gave them a short-term, 5-year paper.

Mr. BARRACK. Yes, sir.

Senator LAXALT. And out of all that, you finally arrived at a transaction that apparently was mutually beneficial to you and to the savings and loan in question.

Mr. BARRACK. Yes, sir.

Senator LAXALT. And that essentially closed the transaction out except that later, principally because the lot in question was not developable, the original plan by which Elkin and Howard came in was frustrated.

Mr. BARRACK. Yes, sir, that is correct.

Senator LAXALT. Do I understand that correctly?

Mr. BARRACK. Yes, sir; that was one of the components in addition to, I think, their personal plans had changed and the economy had down-turned.

Senator LAXALT. Also, I gather, the son did not move in.

Mr. BARRACK. Yes, sir.

Senator LAXALT. What was the reason for that? I do not know that that is in the record. Do you know?

Mr. BARRACK. The reason for that, as I understand it, was that he was having a difficult time in settling the move with his familiar situation. He has a wife and a baby. My understanding is it was just difficult for him to convince the rest of his entourage to move.

Senator LAXALT. But, for whatever reason, the profits that you envisioned for your friends did not come about, and your friends ended up taking a loss.

Mr. BARRACK. Yes, sir; that is correct.

Senator LAXALT. And Elkin absorbed a portion of that loss.

Mr. BARRACK. Yes, sir; he did.

Senator LAXALT. And you made him whole on the basis of a bonus.

Mr. BARRACK. Previous to the sale.

Senator LAXALT. And once this transaction was completed, and thereafter, there was absolutely no connection between the Meese transaction and your entry here into the Government, was there?

Mr. BARRACK. Totally separate transaction, Senator.

Senator LAXALT. As a matter of fact, Pen James had been attempting to recruit you, as well as several other young executives in this country, to come into this administration, is that not correct?

Mr. BARRACK. Yes, Senator; that is correct.

Senator LAXALT. And you finally decided to come in.

Mr. BARRACK. Yes, sir.

Senator LAXALT. And you came in to a position that was not even subject to presidential confirmation. Is that not correct?

Mr. BARRACK. That is absolutely correct.

Senator LAXALT. And you came here to take a salary of what? What was the salary?

Mr. BARRACK. I believe it was $64,000, $60,000, between $64,000 and $68,000 I think it varied.

Senator LAXALT. Without getting into specifics, I would think you as well as Mr. Meese took a financial bath in coming into this town and into this Government, did you not?

Mr. BARRACK. Yes, sir, substantial.

Senator LAXALT. You certainly did not stand to benefit financially for taking this position in the U.S. Government. Is that true?

Mr. BARRACK. Yes, sir; that is true.

Senator LAXALT. And later you apparently decided, when Commerce did not work out, that you would go back to the private sector.

Mr. BARRACK. Yes, sir; that is correct.

Senator LAXALT. Is that the long and short of the Barrack-Meese story?

Mr. BARRACK. Absolutely.

Senator LAXALT. I thank the witness.

The CHAIRMAN. The distinguished Senator from Maryland.

Senator MATHIAS. Thank you. From your previous testimony, Mr. Barrack, I understand that all of your records are intact.

Mr. BARRACK. Yes, Senator, they are.

Senator MATHIAS. What is your exact relationship with Mr. Elkin? Is he a partner or a joint venturer or an employee? Just what is he?

Mr. BARRACK. Currently Mr. Elkin is an employee, a close friend and confidant. And I am perfectly willing to be a joint venture partner with him on viable transactions.

Senator MATHIAS. But he is an employee?

Mr. BARRACK. Yes, sir, he is.

Senator MATHIAS. Is he on your personal payroll, or is he on a corporate payroll?

Mr. BARRACK. Yes, sir, he is currently on my personal payroll.

Senator MATHIAS. And was he at the time of this transaction?

Mr. BARRACK. No, sir; at the time of the transaction—well, let me define the time of the transaction. From, I believe, September to May, he had no payroll. He was not being paid on a salary basis by anyone.

Senator MATHIAS. Was he compensated in any way? Commissions? Shares?

Mr. BARRACK. Well, he was compensated by me. Whether he was compensated by anybody else, I do not know, Senator.

Senator MATHIAS. How was he compensated by you?

Mr. BARRACK. Well, in the first circumstance, he was compensated by granting of a bonus to him on the loan. And I think I extended to him another $10,000 payment between the time of, I think, December, sometime in December or January or February, I do not recall the exact day.

Senator **Mathias**. You said you were not sure whether or not the bonus had been claimed by you as a business expense on your tax——

Mr. **Barrack**. No, Senator; my accountant is working on my 1983 taxes now, and I have not discussed the matter with him at this point.

Senator **Mathias**. What instructions have you given your accountant on that?

Mr. **Barrack**. I am not a tax accountant, and I will seek good counsel and good accountants in order to determine that.

Senator **Mathias**. I know, but an accountant does not know whether a man is an employee in your eyes or whether you have, as you say, a familial relationship with him and you are just taking care of him out of the goodness of your heart. In the first case, it is a tax deduction. In the latter case, it would not be.

What is your relationship?

Mr. **Barrack**. Senator, I cannot answer the question because I do not have the accounting knowledge to answer the question. The question is did I structure the distribution of the money for him for tax advantage, then the answer would be no. If my——

Senator **Mathias**. I am not suggesting that it is structured in any way. I am just trying to ascertain what the facts are. Was he in an employer-employee relationship? Or were you just being his benefactor? I mean, that is what it comes down to, just very simply.

Mr. **Barrack**. Senator, I cannot answer the question.

Senator **Mathias**. Nobody else can answer it if you cannot.

Mr. **Barrack**. I will have to ponder it, and I will be happy to supply you with an answer. But you are asking for a technical response; I am not prepared at this point in time to give you one. He was all those things. He was an employee. He was a friend.

Senator **Mathias**. I am not trying to ask you to make a legal decision on anything. I am just trying to ascertain what he was in your mind, whether he was an employee or whether he was your protege, whom you were willing to support.

Let me go on with the understanding that you will advise the committee exactly what the determination of that matter is.

Mr. **Barrack**. Yes, Senator, I will.

Senator **Mathias**. Let me go on to ask you this. Was the amount that you lent to Mr. Elkin tied in any way to the amount that he needed to buy the Meese property? Or would you have loaned him $75,000 as a kind of stake regardless of the purchase price?

Mr. **Barrack**. Well, the answer to the question is I would have loaned him whatever the amount were for the investment that he and I decided for him to go in. And the answer to the first part of your question is yes, I loaned him that amount for the Meese transaction.

Senator **Mathias**. But you would have loaned him as much as he needed if more had been required?

Mr. **Barrack**. I cannot give you an answer on how much more. If the opportunity, I thought, was economically viable, I probably would have, yes.

Senator **Mathias**. What incentive did you have then to hold the purchase of the Meese property to its actual market value?

Mr. **Barrack**. I am sorry, Senator, I do not understand the question.

Senator **Mathias**. Well, if you were prepared to pay more, it really did not matter what was paid for the property, right?

Mr. **Barrack**. Senator, perhaps I did not explain myself correctly. I was not prepared to pay more for the Meese transaction. I was prepared to provide Mr. Elkin with more money were he to have another investment opportunity that he deemed more viable than the transaction in which he had got himself involved.

Senator **Mathias**. You are familiar with property values in California?

Mr. **Barrack**. Yes, Senator; before this transaction I was.

Senator **Mathias**. Well, look at it from that point of view, your state of mind before this transaction. In your honest judgment, from what you knew about California real estate in general, what did you consider the fair market value of that property to be, the $307,000 that Mr. Meese sold it for, or the $275,000 that Mr. Howard sold it for?

Mr. **Barrack**. In my opinion, at the time that we purchased the home, the fair market value was substantially in excess of what Elkin and Howard purchased the home for. I would be happy to supply you with my rationale if you would like.

In the free market system, I cannot explain why at that point in time the sale was effectuated at $275,000. What it is worth today, I have no idea. I would probably imagine that it is worth substantially more than $275,000 today. So, unfortunately, I cannot answer as to which point in time the value of the house. But absolutely at the time of the transaction was finalized, it was my opinion that, with a modicum of work on the house, there was a substantial amount of equity that could be obtained in a very short period of time.

Senator **Mathias**. At the time that you put up some money to provide Mr. Elkin with a stake, was Mr. Meese aware of your financial participation?

Mr. **Barrack**. No, sir. Mr. Meese was never aware of my financial participation in the transaction whatsoever.

Senator **Mathias**. Did he know about Mr. Elkin's participation?

Mr. **Barrack**. No, sir; to the best of my knowledge, he had no knowledge of Mr. Elkin's participation.

Senator **Mathias**. So, the only person that he knew in the transaction was Mr. Howard, Senior?

Mr. **Barrack**. To the best of my knowledge, that is correct, Senator. I do not know whether he did or he did not.

Senator **Mathias**. But as far as you know, that is all we can ask you——

Mr. **Barrack**. Yes, sir; that is correct.

Senator **Mathias**. That is all we can ask you to tell us.

Mr. **Barrack**. Yes, sir.

Senator **Mathias**. You have testified that one of the attractions of the property was the potential for developing the contiguous lot. Is that right?

Mr. **Barrack**. Yes, sir; that is correct.

Senator **Mathias**. Why, in your judgment as an experienced California real estate man, do you think it was not possible to develop that lot?

Mr. **Barrack**. Well, I am operating on somewhat of secondhand facts, but let me try and give you the rendition as I understand it.

The two lots combined, in other words the lot upon which the house sat and the separate lot, were almost an acre and a half. Where the house was situated was the City of La Mesa. The second lot dropped off and was contiguous to a property line of, I believe it was the City of El Cajon. The idea was to build a second residence on the lower lot, extend the street. The house sat on a cul de sac street, so it required the extension of a driveway to the lower lot. And most importantly, it required the extension of utilities to that lower lot.

Now, the property had been caught in a sandwich between two conflicting jurisdictions, that of La Mesa, which had septic tanks—in fact, the Meese house sat on a septic tank, which was subsequently determined leached into the second lot. The City of El Cajon, I believe it was the City of El Cajon that was the contiguous city, had a sewer system. La Mesa, you could not develop the second lot with a septic tank because of the proximity of the original septic tank to the second lot and various other complications of which I am not technically aware.

Senator **Mathias**. In other words, what you are telling us is that the reason that the lot could not be developed was the result of certain facts that existed.

Mr. **Barrack**. Yes, sir; that is correct.

Senator **Mathias**. It was not a question of the market going soft or other problems. It was factual problems that could have been observed about the lot.

Mr. **Barrack**. Senator, I cannot answer for Elkin or Howard, but my understanding was the cumulative effect of all of those things. The house without the buildability of the lot in and of itself should have been worth increased value just being face-lifted somewhat.

Senator **Mathias**. But the lot could not be developed because of a lack of utilities and various other legal problems that were involved?

Mr. **Barrack**. There were some questions, I believe that those might have been solved, of some economic value. And the determination was the market was at a point where it was worth the effort and money.

Senator **Mathias**. These were problems of record, they could have been ascertained?

Mr. **Barrack**. No, Senator; some of them—I cannot answer whether they were of record or not. I do not believe the utility situation is a problem of record.

Senator **Mathias**. Did Mr. James know of your interest at the time of the——

Mr. **Barrack**. No, Senator; to the best of my knowledge, Mr. James never knew of Elkin's interest in the house.

Senator **Mathias**. Or your interest?

Mr. **Barrack**. I had no interest in the house.

Senator **Mathias**. He did not know that you had put up any money for Elkin that found its way into the property?

Mr. **Barrack**. Yes, Senator; that is correct.

Senator **Mathias**. Or anyone else in the administration?

Mr. **Barrack**. No, Senator; no one.

Senator MATHIAS. My last question, Mr. Barrack. What was the circumstance that motivated you to grant Mr. Elkin the bonus at the time you did, which was in the same amount as the debt that he owed?

Mr. BARRACK. At the time that I had made Mr. Elkin the loan, I was unsure of my own economic stature and the continuity of my own economic stature. I was in somewhat of a divestiture mode. I was not sure whether I was going to stay in the private sector in California or move to New York or, perhaps, go to Washington. Mr. Elkin was basically floating. He had been loyal to me through very difficult times in the business world. I had admired his ambition, how he proceeded with me and my company. When I was fortunate enough to sell a very important property, which he was instrumental in maintaining during my absence, I felt that it would be a small contribution if I could help him get a foothold for his own life. And that is absolutely the reason.

Senator MATHIAS. So, it was the sale of the property to which he had contributed some services that was the occasion for granting him the bonus?

Mr. BARRACK. That was the fact that afforded me the opportunity of being able to do it, yes.

Senator MATHIAS. That provided you with the cash to do so. Is that right?

Mr. BARRACK. Yes, Senator; that is correct.

Senator MATHIAS. And it also was a moment in which you recognized the services that made the sale possible. Is that your testimony?

Mr. BARRACK. I had always realized the services that were important. I do not know about the timing of my feelings.

Senator MATHIAS. Thank you, Mr. Chairman. Thank you, Mr. Barrack.

The CHAIRMAN. Thank you. Mr. Barrack, I think I can finish in about 3 minutes with you myself.

I believe you discussed with Mr. Ted Elkin the potential opportunity of providing capital for investment purposes around June 1982. Is that correct?

Mr. BARRACK. Yes, Mr. Chairman; that is correct.

The CHAIRMAN. Did you not learn about the Meese home until mid-August of that year?

Mr. BARRACK. Yes, Senator; that is correct.

The CHAIRMAN. So, your providing the money to Mr. Elkin which he later used for the Meese home was in no way a spur-of-the-moment transaction on your part? You had planned to do this all along?

Mr. BARRACK. Yes, sir; that is correct.

The CHAIRMAN. Is that correct?

Mr. BARRACK. Yes, sir; that is absolutely correct.

The CHAIRMAN. I am not going to take your time and go into a whole lot of detail here of something that does not concern anything. I want to ask you this question, and this is the juice in the coconut, I think. This is what we want to know.

Are you aware, Mr. Barrack, of any impropriety on the part of Mr. Meese regarding these transactions?

Mr. **Barrack**. There was absolutely none, Senator, in my opinion. I am not aware of any.

The **Chairman**. Do you know of any impropriety on the part of Mr. Meese regarding any other transaction that should disbar him from becoming Attorney General of the United States?

Mr. **Barrack**. No, Mr. Chairman; I do not.

The **Chairman**. That is all. You are excused.

Mr. **Barrack**. Thank you, Mr. Chairman. Thank you, Senators.

Senator **Metzenbaum**. Mr. Chairman?

The **Chairman**. Senator, do you want to put the entire statement of Mr. Howard in the record?

Senator **Metzenbaum**. That would be fine.

The **Chairman**. The sworn statement of Mr. Howard will, without objection, be included in the record.

[Material referred to follows:]

Duke Short,
Chief Investigator, U.S. Senate Judiciary Committee,
Dirksen Senate Office Building, Washington, DC.

Please find below the answers to the questions which you have raised with regard to the circumstances surrounding the purchase of the Meese home in La Mesa, California.

At the time I purchased the house I did not know Ed Meese, had never met Ed Meese, and didn't know that Ed Meese was a prominent political figure.

I purchased the house in September of 1981 for $307,500.00. The property consisted of a house on a lot and an adjoining lot.

I sold the house in the Spring of 1982 for $275,000. I sold the house because my personal plans had changed. The economy had worsened and adjoining lot was not buildable in the near future.

In 1980 Mr. Barrack hired Howco Construction Company to perform substantial construction work on a house which he had purchased in Holmby Hills, California. The payment Howco received in 1983 was the final payment for work on the Holmby Hills house.

Truly yours,

Irvin E. Howard.

The **Chairman**. Senator Metzenbaum?

Senator **Metzenbaum**. Mr. Chairman, I would like to make a statement. I have been here since 9:30 this morning. I make no bones about it. It is 6:30. I have made some commitments with my family, my wife. I see no reason Mr. McKean cannnot come back tomorrow. He does not seem to be in any personal inconvenience. The only one who seems to be inconvenienced by coming back is Mr. Califano. I make no bones about it. I question the propriety of Mr. Califano's being here, representing Mr. McKean, since Mr. Califano is paid by the U.S. Postal Commission. Mr. McKean is not appearing before us, as I understand it, as the Chairman of the Postal Commission but is appearing before us as a private citizen.

I would like to accommodate Mr. Califano, but it is my opinion that this committee ought to recess until anytime tomorrow morning that the chairman sees fit. We do have to continue over until tomorrow to hear a number of other witnesses anyhow. I see no reason why we have to hear Mr. McKean tonight, and I am not sure what we are proving by doing so.

I would like to request you respectfully to do that.

The **Chairman**. Mr. McKean, I would like to ask you the question. Is it convenient for you to come back tomorrow, or did you want to finish tonight?

Mr. **McKean**. It would be, indeed, an inconvenience, Mr. Chairman. I have been here four times today already, with different times of appearance.

In this posture, I want to assure you that I have nothing to hide. I am going to have to tell you that I will be inconvenienced to the extent that I am indeed the Chairman of the Board of the U.S. Postal Service. We have a board meeting that is set for an open session tomorrow morning. As I mentioned earlier, I have been back here four times already. I have my records pretty well in order. I think we could go through this rather quickly.

Senator **Metzenbaum**. Mr. Chairman, I do not mind if he comes in the afternoon, if that is more convenient for him. I am available. I expect to be here. Or I will come early in the morning if that is very convenient for him.

I just think that we ought not to go forward tonight. I just do not think it is fair.

The **Chairman**. Senator Laxalt.

Senator **Laxalt**. Mr. Chairman, we have been at this for quite a long while, for hours and hours. The fact is that we had a 3-hour delay this morning not occasioned by anybody on this side of the aisle.

Senator **Metzenbaum**. But not because of me.

Senator **Laxalt**. Well, that may well be.

Senator **Metzenbaum**. Not because of me. I was here at 9:30, ready to proceed. Nobody asked me if I wanted a delay. I just was advised that there would be a delay.

Senator **Laxalt**. It is my view that we should go forward and complete this tonight.

Senator **Metzenbaum**. What difference does it make? This man can come down tomorrow. We have been going here for 9 hours today. It is not a matter of his—the fact that he came down four times today, I certainly did not summon him down, and I do not know under what circumstances. And I just think that there is—if there were some sense of urgency that this matter had to be voted on within 24 hours or 48 hours, it might be different; but that is not the case. We must be in session tomorrow to hear the other witnessss. And I am just asking to put this witness over. I do not think it is an unreasonable request. I have tried to accommodate the other members. The other day I came here, stood back while committee member after committee member was taken before me. Today, whatever time the chairman said he wanted to meet, I said that is fine with me. And I have been here. I did not eat lunch today, except I grabbed a bite down here in the hall.

I just think it is unreasonable and there is no real sense of urgency why this man cannot come back tomorrow and conduct an orderly hearing. I am requesting the chairman to do that.

Senator **Laxalt**. The problem we have, very frankly, is that this whole situation is rife with conflicts. Mr. Califano has indicated that he cannot be here. He apparently has a very important trial. The witness apparently has a conflict. I, very frankly, have a conflict myself. I would like to be present.

Senator **Metzenbaum**. I will make it any time you want to.

Senator **Laxalt**. I am traveling tomorrow with the President to do a couple of nonpolitical things.

Senator METZENBAUM. Anytime you want. If you want to do it, anytime at all tomorrow, the next day, whatever you want, I am agreeable to it. I have no problem about that. You choose the time, I will be here.

Senator LAXALT. I would anticipate that with this time deadline imposed by your wife, you are going to be extremely brief in your presentation tonight. Is that assumption incorrect?

Senator METZENBAUM. I think you are asking me to foreclose a line of questioning of this man that I do not think I should be called upon to do. And I make no bones about it. I will continue on, and I will cancel with my wife——

Senator LAXALT. No.

Senator METZENBAUM.—but I do not think it is reasonable to ask me to do it.

Senator LAXALT. And I would not want you to do it. How long do you expect that your questioning will take? Do you have any idea?

Senator METZENBAUM. I would guess an hour and a half.

Senator LAXALT. An hour and a half?

Senator METZENBAUM. Something in that area. I could go longer or shorter. But, you know, we never know what these witnesses, how they will answer, briefly, at length. I am willing to do it anytime it is convenient for Mr. McKean and for the other members of the Committee.

Senator LAXALT. Perhaps we could hear from Mr. Califano and the witness on this matter. It is a scheduling conflict, no doubt.

The CHAIRMAN. We had planned to finish this hearing tonight. We have got some other panels here. I understand there is a witness back there now wanting to be heard. We have tried to accommodate all of these witnesses in every way we could. We tried to accommodate Senator Kennedy this morning. We tried to accommodate Senator Biden. We tried to accommodate the distinguished Senator from Ohio. He wanted to send someone to California and take some testimony. We did that. We have done everything we could to accommodate people. I do not mind carrying this over if it is going to inconvenience a lot of other people. But we have got to take into consideration others besides you, Senator.

Senator METZENBAUM. The one I am least worried about is Mr. Califano, because he has got a case in court. Frankly, I said publicly I do not believe he belongs here. He is attorney for the Postal Commission, not attorney for Mr. McKean personally.

The CHAIRMAN. He has a right——

Senator METZENBAUM. I am willing to accommodate Mr. Califano, he is a nice fellow. If he wants to come early tomorrow morning, late tomorrow afternoon, during the noon hour, whatever, I will do that.

Senator LAXALT. Mr. Chairman, may I ask a question?

The CHAIRMAN. The Senator from Nevada.

Senator LAXALT. Might we continue on Wednesday?

Senator METZENBAUM. Mr. Califano just says the afternoon is convenient.

The CHAIRMAN. We do not want to put this thing off so long. I am willing to stay here until 12 o'clock tonight. It is not fair to Mr. Meese to carry this on and on and on. I think a lot of these questions, frankly, have just taken time. There has been a lot of time that I think we have lost here. At any rate, Senators have a right to ask questions. I have not tried to circumscribe them in any way. But the time comes when you have to wind up something.

We have got three hearings scheduled for this committee on Wednesday. We cannot do it then. We will have to do it tomorrow if we do it.

Let me ask you this, Mr. McKean and Mr. Califano. If we set this hearing at 9 o'clock in the morning, could you be here then? I think he said he could finish in an hour and a half.

Mr. **CALIFANO**. Mr. Chairman, I have a court hearing, as Senator Laxalt indicated, at 10 o'clock tomorrow morning. Mr. McKean is chairing the Board of Governors of the Postal Service at 8:30 tomorrow morning. Tomorrow afternoon would be more convenient as far as we are concerned. But, obviously, we will work to meet the committee's schedule.

Senator **METZENBAUM**. Take the panels in the morning and take Mr. McKean in the afternoon.

The **CHAIRMAN**. Well, Senator, everybody wants to go ahead but you.

Senator **METZENBAUM**. No, that——

The **CHAIRMAN**. But I am going to accommodate you.

Senator **METZENBAUM**. You're a wonderful man.

The **CHAIRMAN**. I have given in to you on everything here to try to satisfy you.

We will meet then tomorrow. What time will suit you tomorrow, Mr. McKean, you and Mr. Califano?

Mr. **MCKEAN**. At 2 in the afternoon.

The **CHAIRMAN**. Does that suit you, Mr. Califano?

Mr. **CALIFANO**. That is fine, Mr. Chairman.

The **CHAIRMAN**. We will meet tomorrow at 2 o'clock in room 226. We now stand adjourned.

[Whereupon, at 6:40 p.m., the Committee was recessed, to reconvene at 2 p.m. the following day.]

NOMINATION OF EDWIN MEESE III

TUESDAY, MARCH 6, 1984

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:05 p.m., in room SD-228, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Biden, Metzenbaum, Simpson, Mathias, and Laxalt.

Staff present: Duke Short, chief investigator; Joseph Kopka and Allan J. Spence, investigators; and Ruth E. Lucas, investigative clerk.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

Senator Laxalt will take over the hearings in just a few minutes. I will go ahead and open until he gets here. We have tried to give an opportunity to everybody who wanted to testify.

We have 10 or 11 more witnesses here who want to testify. The last group ends up, I believe, with the Director of the American Civil Liberties Union, the National Democratic Policy Committee; in other words, I think we are giving a chance to everybody to express themselves against Mr. Meese who wanted to.

As I stated in the beginning, the President appointed him; he is presumed to be qualified, but the Senate has to act on the confirmation, and we wanted all who had any expressions about him to give them a chance to say so.

Now, we have carried on this hearing for 3 or 4 days and so we expect to limit the situation to those who have been suggested or who have asked to testify heretofore. We expect to finish the hearings today. We will run into the night if necessary. We have tried to accommodate the various Senators who raised questions about Mr. Meese by not running at night, not running over the weekend, and we have done all we could to lean over backwards to accommodate them.

But the time has come now to wind up the hearing and we will wind it up today or sometime this evening if necessary.

Senator METZENBAUM. Mr. Chairman, may I be heard for just a minute?

The CHAIRMAN. Yes, sir.

OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator **Metzenbaum**. Mr. Chairman, first I want to say that you have been eminently fair and I want to cooperate with you in every way possible and I do not want to extend the hearings. However, I had advised Chief Investigator Duke Short that we have about four questions that we would like to ask Mr. Fred Fielding of the White House.

Now, I called Mr. Fielding on the phone this morning. He was at the White House. He said he was on another telephone call and could not take my call because he was called down to the President's office. My questions would be very brief. They would not delay this hearing. And I wonder if I could ask the chairman if he would be good enough to invite Mr. Fielding down. If he would not, then I would be glad to call Mr. Fielding and invite him down. And I assume that we would be willing to hear him if he does come.

The **Chairman**. Senator, if you would give justification for that and we will take it under consideration. And Senator Laxalt will make a statement on that a little later.

Senator **Metzenbaum**. Do you want me to do that now or do you want——

The **Chairman**. I would like Senator Laxalt to hear that. So if you would wait until he comes. In the meantime I think we can go ahead.

Now, Mr. McKean, we will proceed with your testimony. And we have already sworn you and I just wanted to remind you that you are under oath. And so do you wish to make a statement or just respond to questions?

STATEMENT OF JOHN R. McKEAN, ACCOMPANIED BY JOSEPH CALIFANO, COUNSEL TO THE BOARD OF GOVERNORS, U.S. POSTAL SERVICE.

Mr. **McKean**. I do, Senator; I would like to make a brief opening statement. Good afternoon, Mr. Chairman. I am John R. McKean. I am president of John R. McKean Accountants, a professional corporation of certified public accountants in San Francisco, CA.

I have served as a member of the Board of Governors of the U.S. Postal Service since March of 1982, and I have been chairman of that Board since the beginning of this year.

With me today is Joseph A. Califano Jr., who is counsel to the Board of Governors and has been counsel to the Board of Governors since approximately early 1980.

I am appearing here today voluntarily in response to the committee's request. I welcome the opportunity to assist the committee in carrying out its responsibilities in connection with the nomination of Edwin Meese III to be Attorney General of the United States.

In my private accounting practice, I have served as a tax and financial advisor to Mr. Meese since June 1981. At that time I reviewed Mr. Meese's financial situation and I estimated that he would need approximately $60,000 during the balance of 1981 to meet his financial obligations.

Following that review I arranged a $40,000 loan for Mr. Meese from funds which one of my partners managed for another client of the firm. Interest on this loan was at a 21 percent annual rate through September 30, 1981. Thereafter the rate was either 18 percent per year or the prime rate, whichever rate was higher.

Mr. Meese did in fact require an additional $20,000 at the end of 1981 to meet his obligations, as I had projected in June 1981. Therefore, in December 1981 I arranged a second loan in the amount of $20,000. Interest on the second loan was to be either 18 percent or the prime rate, again whichever rate was higher.

Mr. Meese has repaid the full $60,000. In addition, he has paid interest on these loans amounting to $23,440.

Mr. Chairman, the circumstances surrounding these loans has been extensively reviewed by the General Accounting Office of the Congress and by the Committee on Post Office and Civil Service of the House of Representatives. I understand that the General Accounting Office's report released on September 20, 1983 has already been made a part of this committee's record.

I would like to ask that the record of the October 5, 1983 public hearing held by the Committee on Post Office and Civil Service also be made a part of the committee's records.

In addition, I would like to submit for the record the chronology of events I prepared and submitted to this committee on February 27, 1984 which sets out the circumstances surrounding the loans and their repayment. My submission also contained copies of the documents involved in these loan transactions.

I would be happy to answer any questions the committee may have that will assist the committee in carrying out its responsibilities with respect to the Meese nomination.

The CHAIRMAN. I just want to ask you this, Mr. McKean, before I leave. Do you know of anything that Mr. Meese has done in connection with the matters with which you may be familiar that is inappropriate, improper, and that should deny him from being confirmed as Attorney General?

Mr. MCKEAN. No; I do not, Mr. Chairman.

The CHAIRMAN. Do you know of any act of his within your knowledge that should deny him of being confirmed as Attorney General?

Mr. MCKEAN. No, Mr. Chairman.

The CHAIRMAN. Has there been any transaction between you or anything that has been considered by you in a business way that you feel in any way should deprive him of being confirmed as Attorney General?

Mr. MCKEAN. Mr. Chairman, the transaction to which I have reference in my opening statement was an entirely appropriate business deal which was subsequently involved in the repayment of a loan. And none of these things are in any way an improper business dealing.

The CHAIRMAN. Do you know of any action on his part in getting any loan for his house or for any other purpose that had any connection with anyone's appointment in the Government?

Mr. MCKEAN. With respect to the house transaction, I have no involvement whatsoever, and the knowledge that I have of the transaction of the house was only on a post facto basis; that is that the house had sold. I can only address the transaction to which I have some direct knowledge, and if the question is whether that loan transaction in any way influenced the appointment that I have, I presently serve, as you know, as chairman of the Postal Board of Governors, I can say without any equivocation whatsoever it was the farthest thing from my mind when I first met Mr. Meese. And it was the farthest thing from his mind.

It simply was a structured business meeting, and never even in jest was there any discussion of an appointment of any kind.

The CHAIRMAN. Did any loan that he obtained, as far as you know, have any connection with your appointment or anyone else's appointment with the Government?

Mr. MCKEAN. No.

The CHAIRMAN. The Senator from Ohio.

Senator METZENBAUM. I note that the Senator from Nevada is here now and you had asked me State my request when he was present.

Senator Laxalt, I attempted to reach Mr. Fred Fielding this morning in connection with a few questions that I have of him, and found that he said he was there but that he was then called down to the President's office. I have been waiting for his call back. I did get a call back from a White House aide, but not from Mr. Fielding.

Under the circumstances, since Mr. Fielding is not very far from here and it would not delay us, I would like to request that Mr. Fielding join us at some point this afternoon at his convenience in order that I might be given the privilege of asking a few questions in connection with Mr. Meese's confirmation.

Senator LAXALT. I wonder if the Senator could be just a little bit more specific as to the areas of inquiry——

Senator METZENBAUM. Sure.

Senator LAXALT [continuing]. Because I will make it a point when it is convenient to communicate directly with Mr. Fielding and see what his feelings are.

Senator METZENBAUM. I have no reservations about doing that. I would like to know his answer on a question that when the Washington Post article appeared in July 1983 outlining details of the McKean loan, Mr. Fielding was quoted as saying that it was his understanding that Meese was paying the interest in a timely fashion.

And I would like to ask him if that is what Meese had told him because, as the evidence has already indicated, at that point no interest had been paid.

And then I would like to ask him whether he pressed him further on the subject and discovered what the actual facts were.

Second, I would——

The CHAIRMAN. Senator, on that question that you just mentioned, Mr. Fielding is a friend, I am sure, of Mr. Meese. If Mr. Meese just discussed his loan with him, what difference would that make?

Senator METZENBAUM. Well, it would make a difference, I think to all of us, Mr. Chairman, if Mr. Fielding——

The CHAIRMAN. In other words, if Mr. Fielding had nothing to do with this loan, in obtaining the loan or had nothing to do with the appointment of anyone, then you allege there might be some connection with obtaining the loan and the appointment of someone in the Government because Mr. Fielding does not make appointments in the Government.

In other words, if this was just a friendly conversation between them, even if it appeared in the newspaper, what difference would that make? Cannot people confer with each other and talk with each other? Mr. Meese evidently, from what he said, he was having a hard time with his budget, just as I do and probably some other people; not you, because I understand you are a very wealthy man.

Senator **Metzenbaum**. Very, very wealthy.

The **Chairman**. I understand you are a millionaire, I believe, according to the records.

Senator **Metzenbaum**. Many, many times over.

The **Chairman**. So, in other words, I do not see any connection there, just talking something over with a friend about a personal loan where there is no connection with any appointment or no connection with any wrongdoing that would have any bearing on this matter.

Senator **Metzenbaum**. It is obvious, Mr. Chairman, that I have not made my point clear. Mr. Fielding is the ethics counselor——

The **Chairman**. Excuse me just a minute. I have another matter I have got to go to. I am going to turn the chair over to the distinguished Senator from Nevada, Mr. Laxalt, so he will take charge now.

Senator **Metzenbaum**. I will respond further to the chairman's comment, but the point is that Mr. Fielding holds a position having to do with maintenance of ethical propriety in the White House. I do not know his specific title, but it was he who was saying publicly that Mr. Meese was making his payments in a timely fashion.

Senator **Laxalt** [presiding]. Did he say that in an official capacity? Is that what the article states?

Senator **Metzenbaum**. I cannot answer that, Paul. I do not have the article in front of me, but I will be happy to find the article and tell you that. But I think it was in that capacity that inquiry was made of him. And I think that if Mr. Meese did not provide him with accurate facts, that would be significant as far as this hearing is concerned.

Senator **Laxalt**. In what way?

Senator **Metzenbaum**. Well, I think that if the White House Counsel on Ethics asks a member of the White House staff a question as to whether he is paying the interest and it has become a matter of public note, and he then responds and says, "yes, I am paying them in a timely fashion," and the White House counsel tells that to the entire world through the press and it is not in accordance with the facts, then I think you would agree that has relevance.

Senator **Laxalt**. You are not suggesting that Mr. Meese, in view of the record that we have here and all the documentation, would misstate the interest situation to Mr. Fielding, are you, Senator?

Senator **Metzenbaum**. I am not suggesting anything, just the facts, just the facts.

Senator **Laxalt**. OK. What else do you have?

Senator **Metzenbaum**. I would like to know whether if after news articles had focused on the circumstances of Mr. Meese's promotion to colonel in the Army Reserves, did he, as reported in the

Los Angeles Times, urge him to at least transfer back to the Retired Reserve in order to, quote, "remove the controversy"?

Third, I would like to ask him whether he was involved——

Senator **Laxalt**. That quote was attributed to Mr. Fielding? Is that a direct quote?

Senator **Metzenbaum**. That is——

Senator **Laxalt**. Los Angeles Times. When?

Senator **Metzenbaum**. That is my understanding. But let me be sure that I am answering you correctly, Paul.

Let me read you the item.

Senator **Laxalt**. All right.

Senator **Metzenbaum** [reading]:

> Administration sources, who asked that they not be identified, said Sunday that Fred F. Fielding, counsel to the President, had urged that Meese at least transfer back to the Retired Reserve, a move that would trigger mandatory retirement. One source said Fielding wanted Meese to leave the Reserve to remove the controversy.

Senator **Laxalt**. So, there is no direct quotation from Fielding, just the usual anonymous White House sources.

Senator **Metzenbaum**. That is correct.

Senator **Laxalt**. All right.

Senator **Metzenbaum**. And then I would like to ask Mr. Fielding whether earlier this month he had advised Meese to contact McKean and to pay the rest of the interest on the loan plus interest on the interest in order to remove another controversy.

Now, it is a fact that there is nothing in the record that indicated that there was interest on interest being charged Mr. Meese by Mr. McKean, and yet the fact is that we find that after the matter becomes a public issue, that Mr. McKean then sends—Mr. Meese sends an additional check; I think it is in the sum of something like $3,234. I do not know the exact figure, representing interest on the interest.

We would like to know whether it was Mr. Fielding who advised him to that effect.

And then we would like to know whether in November——

Senator **Laxalt**. What is the time sequence on this, Senator?

Senator **Metzenbaum**. Earlier this month.

Senator **Laxalt**. February 1984.

Senator **Metzenbaum**. Approximately February 14, 1984, Meese calls McKean and told him he would shortly be paying the outstanding interest plus interest on the interest. Now, that is——

Senator **Laxalt**. And your inquiry is directed purely to the interest on the interest item of $3,200 and whether or not Mr. Fielding had advised Mr. Meese to do that?

Senator **Metzenbaum**. That is correct.

And, fourth, we would like to know whether Mr. Fielding was involved in the matter having to do with Mr. Duffy, Sheriff Duffy, whose integrity Mr. Meese had defended and under what circumstances Mr. Duffy was urged to resign from the President's Commission on Organized Crime or at least not to accept the appointment. And we would like to know whether—what Mr. Fielding can tell us about that matter.

That was November 1983.

Senator **Laxalt**. OK. What else?

Senator **Metzenbaum**. That is all.

Senator LAXALT. So we have four areas of inquiry that you are concerned about?

The CHAIRMAN. All right. We will establish communication with him and see how he feels about this.

All right. I guess we can proceed, then. And I assume the Senator from Ohio wishes to proceed with his questioning of Mr. McKean. Very well.

Senator METZENBAUM. Thank you, Mr. Chairman.

Mr. McKean, first I would like to ask you to establish just how and when you first met Mr. Meese and what services you were performing for him.

Now, I should point out there have been several conflicting statements about when you first met and what services you began performing for him and when.

First of all, would you confirm that you were introduced to Mr. Meese by Michael Deaver.

Mr. MCKEAN. The answer to that is yes in the sense of a referral. There was no formal introduction.

Senator METZENBAUM. And when was that?

Mr. MCKEAN. The meeting that took place with Mr. Meese took place in my office on June 13, 1981, and at that meeting was myself, Mr. Meese, and his wife Ursula.

Senator METZENBAUM. How long have you known Mr. Deaver?

Mr. MCKEAN. Three or four years.

Senator METZENBAUM. You began advising him on personal tax matters when?

Mr. MCKEAN. In the December 1980 period.

Senator METZENBAUM. And you continue to do so?

Mr. MCKEAN. Yes.

Senator METZENBAUM. All right. Let us go over your beginning with Mr. Meese. On page 5 of the GAO report, September 14, 1983, it is stated:

> Mr. Meese told us that he was introduced to Mr. McKean by Mr. Deaver in late 1980 or early 1981. Mr. McKean immediately began advising Mr. and Mrs. Meese on tax and other financial matters.

Now, in his submission to the committee dated February 29, 1984, Mr. Meese states on page 4.

> I first met Mr. McKean in June 1981 when I retained his services to assist me in a review of my projected and general financial situation for 1981.

Now, could you clear up this discrepancy. Had you been handling some tax matters for Mr. Meese in 1980 or early 1981 or is it not a fact that the meeting in your office on June 13, 1981, was the first time you met Mr. Meese and the first time you undertook a business relationship with him.

Mr. MCKEAN. The testimony of Mr. Meese before this hearing is correct. It essentially paraphrases what I just said; we first met on June 13, 1981.

Senator METZENBAUM. So that the GAO report indicating that—saying that Mr. Meese told us he was introduced to Mr. McKean by Mr. Deaver in late 1980 or early 1981 was not a correct point of time?

Mr. MCKEAN. I would read that a bit differently, Senator, with all due respect.

Senator METZENBAUM. Please do.

Mr. McKEAN. The introduction perhaps could have been of the name of McKean and that the possibility is that at sometime, at a later date, I would actually visit with the Meeses and begin to perform some services. And in fact that corresponds with my recollection of the first meeting with Mr. Meese.

He said something to the effect that I have heard of your name before from Mike.

Senator METZENBAUM. He was not introduced to you in late 1980, was he, or in early 1981?

Mr. McKEAN. Introduction in a face to face basis, no.

Senator METZENBAUM. Now, Mr. Meese testified last Thursday about the reason for meeting with you and said:

> Because of the cash flow problems that we were experiencing and because I needed assistance, obviously, to prepare my tax returns, based on the complications of liquidating a law practice and changing our location to the east coast, I talked with Mr. McKean, I believe, for the first time in June 1981.

Now, could you comment on Mr. and Mrs. Meese's tax situation that you discussed at these meetings. Were they complicated and when did you file his taxes?

Mr. McKEAN. The meeting that I had with Mr. Meese was in June 1981, at which time his 1980 tax return had not yet been filed. He was, of course, from the San Diego area, and the preparation of his tax return for 1980 was in process by another certified public accounting firm. So the discussion did not center upon the 1980 filing situation. It centered, I suppose, in the tax sense, on the amount of income he could expect in 1981, a projection of the tax related to that, and that is the focus.

Senator METZENBAUM. So that actually you were not meeting with him in June 1981 concerning his taxes for 1980; you were—in fact, it did not have anything to do with taxes. You really were talking about financial planning and some of Mr. Meese's financial problems at that time; is that not correct?

Mr. McKEAN. Well, of course, Senator, the meeting had that as a subject also, but I might mention that one of the liabilities that existed was the final balance due that was still owed on the 1980 tax return.

And we discussed the possibility of having a look at that to see if there was not something that perhaps could be done on the 1980 return. The main focus in terms of tax work, however, was 1981.

Senator METZENBAUM. Now, then you met with him again on June 17, 4 days later?

Mr. McKEAN. Yes.

Senator METZENBAUM. Please describe the meetings that you held with him. What was discussed and what developed out of those meetings.

Mr. McKEAN. We had worked on a projection of what his cash needs would be and what the effect would be in 1981 of what was a fixed income. He was going to work for the Federal Government. There were restrictions in terms of any outside honoraria, and the ultimate result of that was to indicate that the amount of withholding tax that was taken out of his paycheck by the Federal disbursing agency was too high and we were able to reduce that and advise the payroll disbursing agent to reduce the withholding tax that would otherwise have been taken out.

Senator METZENBAUM. What else was discussed?

Mr. MCKEAN. The fact that the cash needs at present indicated the necessity of a sum of money and that future amounts of cash would be needed up to the $60,000 that we discussed right from the outset.

Senator METZENBAUM. Well, is it fair to say, Mr. McKean, of your meeting wound up as indicating more than Mr. Meese needing tax advice; he needed some advice or help in raising some money because he had a cash shortage position and you were then going to help him get that money

Mr. MCKEAN. Well, I would not characterize it as main or not main, but the cash-flow aspect relates to the amount of tax that you have to pay. He was having a significant amount of withholding tax taken out of his paycheck and we were able to advise that no further taxes needed to be taken out of that paycheck.

So that was a part of the meeting and then the arrangement for the loan that my documents have reference to.

Senator METZENBAUM. Tell us about that, please, about the arrangements for the loan.

Mr. MCKEAN. The firm, my firm, under the auspices of a partner of mine, manages certain funds from other clients and these funds are available for investment or loan, again under the auspices of my partner.

There were certain sums available at that time, and in between the time of June 13 and June 17, I discussed with my partner and he agreed to make these available in the sum that I had requested on behalf of Mr. Meese.

Senator METZENBAUM. Up until the McKean loan, how much would you say had been loaned out in this manner by your office?

Mr. MCKEAN. The other partner generally handles these. The 1981 sum that I recall reference to in terms of the investment pool was about $100,000.

Senator METZENBAUM. No; I am really asking you more than that. Let us go back as long as you want. How much have you totally loaned out in this manner from your office?

Mr. MCKEAN. I do not have that sum of money available. I do not have a number.

Senator METZENBAUM. Would you say it is a half a million dollars, a million dollars, or $100,000?

Mr. MCKEAN. I would say it would be—of the three numbers that you mentioned——.

Senator METZENBAUM. Pardon?

Mr. MCKEAN. Of the three numbers that you mentioned, I would have to say that the closer—that we are closer to the middle number than any other, the $500,000, Senator.

Senator METZENBAUM. All right. Now, when you loaned this money—made this loan to Mr. Meese, it was in the name of a trustee?

Mr. MCKEAN. Yes.

Senator METZENBAUM. And you were the trustee?

Mr. MCKEAN. Yes.

Senator METZENBAUM. Did you file a tax return as a trustee?

Mr. McKEAN. The trustee received no income in this case.

Senator METZENBAUM. Well, did the trustee not get the interest on the loan?

Mr. McKEAN. The trustee did not receive the interest, and if the trustee did receive the interest, it would have issued a check immediately as a corresponding deduction.

Senator METZENBAUM. Is it not a fact, Mr. McKean, that the check that Mr. Meese made out was made payable to Edwin Meese, trustee—John McKean, trustee?

Mr. McKEAN. Yes.

Senator METZENBAUM. So that the trustee did receive the money, did he not?

Mr. McKEAN. The requirement for—yes, yes, Senator.

Senator METZENBAUM. And does the statute provide that persons required to make returns of income as a general rule, returns with respect to income taxes under subtitle A shall be made by the following: Every trust having for the taxable year any taxable income or having gross income of $600 or over, regardless of the amount of taxable income.

Did you or did you not ever file a tax return in connection with that—those funds that you received in connection with the alleged trust?

Mr. McKEAN. The answer is no, Senator, and the reason for it is contained in your—what I presume to be an accurate reading from the Internal Revenue Code, because the definition is income and the trustee received no income.

Senator METZENBAUM. Well, every trust receives income and then pays all of it or part of it out to the beneficiaries of the trust. Now, are you sitting there and saying to me as an accountant that if a trust received $1 million in income and disbursed the million dollars, that that trust would not have an obligation to make a report because if it did not, how could the Federal Government ever trace those dollars?

Mr. McKEAN. The fact is that I acted as an intermediary in the transaction and in terms of a trustee relationship, that is the one that I served absolutely as the trustee. If you talk in terms of the year 1981, the trust had no income. If you talk in terms of the year 1982, the trust had no income. If you talk in terms of the year 1983, the trust received a sum of money, which represented income and issued a check in that absolute amount.

And of course in terms of the year 1984 that same trustee relationship produced income and a corresponding reduction.

Senator METZENBAUM. Mr. McKean, is it not really the fact that you were not a trustee as such. You were just sort of an intermediary?

Mr. McKEAN. I have no objection to the use of the term intermediary, Senator, because in fact I was an intermediary. The circumstances of the transaction have always at all times explained that I went to my partner and he had certain funds available and I asked that he give consideration to the utilization of some of those funds for Mr. Meese.

Senator METZENBAUM. Mr. McKean, I have obtained copies of the copies you provided to the GAO, and—well, let me go back. You wrote a check to Mr. Meese on June 25, 1981. You provided a copy of that check, both front and back, and also a subsequent check for $20,000 dated December 28, 1981.

You also provided copies of the checks to the GAO last year; is that correct?

Mr. McKEAN. Yes.

Senator METZENBAUM. I have copies of the copies that you provided to GAO. And I would like to show them to you—I guess Mr. Califano has them there—and ask you why were copies of unsigned checks given to the GAO and copies of signed checks submitted to the committee?

Mr. McKEAN. I have no recollection at all of giving a document that—representing a check that was unsigned, Senator, and since I do not have the GAO report or its attachments with me, I cannot testify to that.

If you note, Senator, the check numbers are the same.

Senator METZENBAUM. I know that.

Mr. McKEAN. And I have no explanation as to why the signature did not appear.

Senator METZENBAUM. You gave them to the GAO in August 1983. Then you made a submission to the committee rather more recently. The ones submitted to the committee is signed. The ones submitted to the GAO are unsigned.

Mr. McKEAN. There may be a problem, Senator, in the quality of the GAO's reproduction devices. I can only say that with regard to this committee, I made a point of seeing to it that the reproductions were absolutely legible.

Senator METZENBAUM. We thought that might be a possibility so we inquired of the GAO and they said all they have are unsigned copies in their files.

Mr. McKEAN. I have no explanation. May I ask, is there an endorsement on the back of their checks?

Senator METZENBAUM. Your firm did not provide the back of the check copy to the GAO.

Mr. McKEAN. Senator, I can only say that if we did not provide, it is because they did not ask. We were entirely cooperative with them, and of course the document speaks for itself.

Senator METZENBAUM. Now, Mr. McKean, you know I have raised some questions with Mr. Meese about borrowing money from an unknown lender.

Was this your money, Mr. McKean?

Mr. McKEAN. No.

Senator METZENBAUM. Was it the money of a member of your family?

Mr McKEAN. No.

Senator METZENBAUM. Was it the money of a partner of yours?

Mr. McKEAN. No, no.

Senator METZENBAUM. Was it the money of a member of a family of a partner of yours?

Mr. McKEAN. Yes; it was.

Senator METZENBAUM. What was the relationship of that partner to the individual who loaned the money?

Mr. McKEAN. It was father to son.

Senator METZENBAUM. So that we have a situation where you are telling the committee that the person who actually loaned the money was your partner's father.

Mr. McKEAN. Yes.

Senator METZENBAUM. Now, in your submission to the committee, you say:

> He provided the funds to McKean's accounting firm through blank, a company owned by his son. Blank was not aware of the identity of the borrower of these funds until the summer of 1983 when stories relating to the loan were published in the press.

Now, what company is involved?

Mr. McKEAN. May I ask what particular date you are reading from, Senator?

Senator METZENBAUM. I am reading from just before July 27, 1981. Let me see; that would be dated June 25, 1981 to June 30, 1981.

Mr. McKEAN. The name which I presume we can continue to regard as Blank, is simply a trade style of the partner that was managing the fund.

Senator METZENBAUM. Trade style? What do you mean by that?

Mr. McKEAN. A name that is used by an individual for the purposes of conducting these loan transactions.

Senator METZENBAUM. Well, Clifford Kupperberg is your partner.

Mr. McKEAN. Yes.

Senator METZENBAUM. Abe Kupperberg's money was involved in this transaction.

Mr. McKEAN. Yes.

Senator METZENBAUM. And is that Alba Trading Co.?

Mr. McKEAN. Yes.

Senator METZENBAUM. So then actually we have a situation where this unnamed lender really is your partner—was any of the money your partner's own actual money, or was it all his dad's?

Mr. McKEAN. As with some families, there may have been some funds that were intermixed, but my partner assured me that these were excess funds that his father had available for investing.

Senator METZENBAUM. Do you have a full partnership with Mr. Kupperberg?

Mr. McKEAN. I have perhaps misstated the title. We have a professional corporation and he is a coshareholder in that professional corporation.

Senator METZENBAUM. There was a second lender of trust. Whose trust was that?

Mr. McKEAN. That was a client of ours and those were funds that were the investment vehicle for a pension trust of a client of ours.

Senator METZENBAUM. And why was there a need to have confidentiality with respect to the identity of that lender?

Mr. McKEAN. Senator, I am here to be as completely open about any of these transactions that you desire. The confidentiality aspect is within your domain. If you ask me to provide you with a name, I certainly will.

Senator METZENBAUM. Please do.

Mr. McKEAN. The recollection I have of the name is that it was the Dillon-Hawaiian Pension Trust.

Senator METZENBAUM. Say it again.

Mr. McKEAN. Dillon—Hawaiian Pension Trust.

Senator METZENBAUM. Dillon—Hawaiian Pension Trust.

Mr. McKEAN. Yes.

Senator METZENBAUM. And that is part of the famous Dillon family from Hawaii?

Mr. McKEAN. No; not the famous one; no.

Senator METZENBAUM. Well, it is certainly not the infamous one. [Laughter.]

Mr. McKEAN. The Dillon Drayage Co. has been a client of ours for 20-something years, and Hawaiian Express is the container operation that carries container freight from San Francisco to Hawaii. The officers, who are nonunion employees of that company, have a pension plan and the funds that they accumulate for the purposes of retirement are managed by Mr. Kupperberg in the sense of finding an investment vehicle for them.

Senator METZENBAUM. Well, Mr. McKean, I used to be involved and practiced law and I know that sometimes law firms have a comingling of their business interests and their legal interests. What part, if any, of the Kupperberg loan would you say was yours or was there any identification that it was not yours and what were the arrangements with Mr. Kupperberg's department or the shareholder?

Mr. McKEAN. We do have to go back a little ways, if you do not mind, Senator.

Senator METZENBAUM. Sure.

Mr. McKEAN. Along about May 1981 a conversation was initiated between myself and Mr. Kupperberg. I do not know who was the initiator. And it was indicated that there would be a sum of money available of about $100,000. He said, do you have a use for the money in any way with respect to your client base, or is there a use that could be made of that money?

I said to him, there appears that there will be. Now, you have to remember that this is May 1981 and most of all, you have to believe that it was May of 1981 and we—I said to him, yes. As it ultimately turned out, the firm used some of the money, that is, my firm, our corporation, and some of the money was used for the purposes of the transactions that are involved here.

And ultimately when you work the $100,000 through a period of 6 or 8 months, it was—the investment pool had been paid down by $40,000 and Mr. Abe Kupperberg was the one party that remained as the lender and Mr. Meese was the one party who remained as the borrower.

Senator METZENBAUM. When Mr. Kupperberg asked you about a need for the money, were you at that time thinking about Mr. Meese's needs?

Mr. McKEAN. I had not even met Mr. Meese, of course, Senator, and if I may say so, I had in mind the fact that we were about to do a very extensive remodeling on our office, which we subsequently did and spent a considerable amount of money for that, which, because of its amount, and other considerations, we put through bank financing instead of attempting any client financing.

Senator METZENBAUM. Now, when Mr. Meese appeared before us—or rather when your partner spoke with GAO, he said that neither of the lenders did any business with the Federal Government. Did Mr. Kupperberg do any business with the Federal Government?

Mr. McKean. No.

Senator Metzenbaum. How about Dillon?

Mr. McKean. No.

Senator Metzenbaum. To the best of your recollection, they never had any business relations with the Government?

Mr. McKean. To the best of my recollection, they never had any business relationship. It is of course possible that a transportation company could move freight under what is called a GBL, Government bill of lading. But it would be incidental and certainly would not have had any influence on this transaction.

Senator Metzenbaum. Now, in your submission you state that you received a call from Mr. Deaver, who asked if you would be interested in an appointment to the Board of Governors of the Postal Service.

Tell us about that conversation, to the best of your ability.

Mr. McKean. Yes; I have a very vivid recollection of that, Senator, because I have in mind the fact that that telephone conversation may indeed be the reason why I am here today.

Senator Metzenbaum. You are a very perceptive man, Mr. McKean.

Mr. McKean. Thank you, Senator.

Senator Metzenbaum. When did it occur?

Mr. McKean. It occurred on July 27, 1981, and it was at my home. It was late in the afternoon. And the discussion was with Mr. Michael Deaver. He mentioned the Postal Service Board of Governors, asked me if I would be interested, and I said yes.

Senator Metzenbaum. Now, at that point you had set up the loan or made the loan to Mr. Meese. This was July. What date did you say?

Mr. McKean. July 27, Senator.

Senator Metzenbaum. July 27. On June 13 you first meet Mr. Meese, and by June 17 you have arranged a loan for him. Is that right?

Mr. McKean. Yes, sir.

Senator Metzenbaum. Now, when did you arrange the tax shelter deal for Mr. Deaver?

Mr. McKean. To the best of my recollection, the work on that was in the very early part of October 1981.

Senator Metzenbaum. And did he not actually contact you in July or August seeking tax advice and worrying about the fact that he was going to have too much income to report?

Mr. McKean. That, of course, Senator, was an ongoing service that we were rendering to the Deavers, and while it is true that I recall there to be some activity in the summer of 1981, there are two points that I would like to make.

One, it was definitely after the telephone call of July 27; and, two, there was nothing unusual about that in the sense of the services we were expected to provide.

Senator Metzenbaum. All right. Let us get the whole thing in proper perspective. In June you arranged a loan for Mr. McKean and made the loan.

Mr. McKEAN. I think——

Senator METZENBAUM. Mr. Meese.

Mr. McKEAN. Yes.

Senator METZENBAUM. In July you get a call, late July, from Mr. Deaver. Around about—asking if you would be interested in a Federal position. Around about that time, either—not at that point, but either before or shortly thereafter—and I say that because you do not seem to be too clear as to when, but I think you indicated you thought it was after, Mr. Deaver calls you and asked you to set up some way to help him reduce his taxes, such as a tax shelter. Now, am I correct in that?

Mr. McKEAN. I would like to correct one statement, Senator. There was no question at all in my mind but that the work with respect to this particular tax matter came after the telephone call. That is one point. The other point is I want to assure you that there was absolutely no connection between any of the transactions in which my two clients were involved and the call concerning an appointment.

Up until that time, there had been no discussion whatsoever about any appointment, not even in jest.

Senator METZENBAUM. So, on July 27, 1981, when Mr. Deaver called you about the Postal Service appointment, you had already arranged a $40,000 loan for Mr. Meese a month earlier, had committed yourself to make an additional $20,000 loan, but you had not begun to talk to Mr. Deaver about his loan. Is that correct?

Mr. McKEAN. The tax shelter that we worked out for Mr. Deaver had not commenced until after the call. That is correct, yes, Senator.

Senator METZENBAUM. Now, on November 4, 1981, the same year of course, President Reagan submitted your name to the Senate for the vacancy on the board expiring December 8, 1986. Now, at that point you had arranged two loans totalling $100,000 for two of the President's top three advisors.

Is that correct?

Mr. McKEAN. Yes.

Senator METZENBAUM. And not only set up the tax shelter when you did, but you made it possible for Mr. Deaver to borrow the money in order to go into the tax shelter; is that correct?

Mr. McKEAN. Of course, that is the function of the arrangement of the loan, Senator.

Senator METZENBAUM. And whose money was that that was loaned to Mr. Deaver?

Mr. McKEAN. The chronology, of course, does its best to explain the Meese transaction and the GAO report discusses the source of the Deaver funding in some detail. Are you asking me the name of the party, Senator?

Senator METZENBAUM. Yes.

Mr. McKEAN. The name is Helmut Moss.

Senator METZENBAUM. Helmut Moss?

Mr. McKEAN. Yes.

Senator METZENBAUM. And Helmut Moss is the man who owns 75 percent of a corporation in which you own 25 percent; is that correct?

Mr. McKEAN. That is correct.

Senator METZENBAUM. And was it that company or Mr. Moss himself that provided the money?

Mr. McKEAN. It was Mr. Moss.

Senator METZENBAUM. So that we now have a situation where Mr. Deaver is borrowing money and he has—and he is borrowing it from a man who has a—is in business with you. And Mr. Meese borrows money. And he is borrowing it from the father of a man who is in business with you. Have I got it straight.

Mr. McKEAN. Absolutely correct.

Senator METZENBAUM. Thank you. Now, on December 28, 1981, Mr. Meese received the other $20,000 check from you; is that correct?

Mr. McKEAN. Yes.

Senator METZENBAUM. And on March 2, 1982, you appeared at a hearing of the Senate Committee on Government Affairs and submitted answers to questions, some of which dealt with business relationships and potential conflicts of interest. At that point you had arranged three loans totaling $120,000 with two of the President's top advisors. Right?

Mr. McKEAN. Yes.

Senator METZENBAUM. Did you reveal these relationships to the committee?

Mr. McKEAN. The focus of the financial disclosure information which had been before the committee was in—with respect to the transactions as of December 31, 1980, in that I was contacted during the year 1981. So the committee——

Senator METZENBAUM. You had better explain that. You lost me on that one. Up until now I have been able to follow you. Tell me that again.

The focus of the committee was what?

Mr. McKEAN. The focus that I had on the preparation of the financial disclosure report was on transactions as of December 31, 1980. And I had submitted financial disclosure reports almost immediately after the telephone call and those financial disclosure reports indicated the condition of my financial statement as of December 31, 1980.

The Moss relationship in terms of my involvement as an investor in that company, coinvestor with Mr. Moss, was fully disclosed.

Senator METZENBAUM. Now, wait; you are appearing on March 2, 1982, right?

Mr. McKEAN. Right.

Senator METZENBAUM. And you are saying to us that you answered the committee's questionnaire based on what were the facts back in December 1980?

Mr. McKEAN. The process of the committee hearing is not to ask that those documents be handed in while the committee is proceeding with the confirmation. The Federal Bureau of Investigation investigated me for 6 months before they approved my appointment to the Board of Governors.

And the date of the submission of the financial statement was as of December 31, 1980.

Senator METZENBAUM. Now, I am at a loss and I am frank to confess to you that I am at a loss to understand how you could have the questionnaire here. I do not see anything that says anything about it being effective only with respect to transactions through December 1980.

Let me read you one question:

> Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

Now, at that point, Mr. McKean, Mr. Meese, and Mr. Deaver are your clients. You answer a general answer, but you do not indicate that relationship.

Mr. McKEAN. Well, my explanation of that Senator is that the continuing business relationship was with Mr. Moss in Idaho Peterbilt and that was fully disclosed and that my continuing business——

Senator METZENBAUM. With Mr. Moss?

Mr. McKEAN. Helmut Moss.

Senator METZEMBAUM. 75 percent and 25 percent, right?

Mr. McKEAN. Yes, sir.

Senator METZENBAUM. OK.

Mr. McKEAN. And my continuing business relationship was with Mr. Kupperburg as a shareholder in the corporation. Now, I think you will find in that financial disclosure report also that there is a requirement that you list any clients that you have, and the requirement has to do with accounts that produced revenue in excess of $5,000 for you.

Senator METZENBAUM. Mr. McKean, I do not want to mislead you. I am not reading from your financial disclosure statement. I am reading from biographical and financial information requested of nominees that was submitted by you to the committee. And it says, "Mr. McKean: thank you Senator. Biography and prehearing questions of Mr. McKean follow." Mr. Roth was presiding at the time; I think the distinguished Senator from Maryland sits on that committee. You answered the question about your financial arrangements and continuing dealings with business associates, clients, or customers, you answered:

> Nominee renders service through a professional corporation, John McKean, for a salary, and that corporation services numerous clients that elect to engage our CPA firm for services. Nominee intends to continue practice as a CPA.

You do not mention anything about your relationship with Mr. Deaver or Mr. Meese.

Mr. McKEAN. Perhaps in order to avoid——

Senator METZENBAUM. Just a moment, please.

Mr. McKEEN. Certainly.

Senator METZENBAUM. Then they ask you another question.

> Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.
>
> Answer. None.
>
> *Question three.* Describe any business relationships, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent that could any way constitute or result in possible conflict of interest to the position for which you have been nominated.
>
> Answer. The nomination is that of service to the U.S. Postal organization. No possible conflict of interest would be created by the nomination. This information is provided to the best of the knowledge and belief of the nominee.

Now, you told the committee at the same time that it was your understanding that Meese and Deaver had submitted your name to the President. Did you not feel that information about the $120,000 of loans should have been made available to members of the committee?

Mr. McKEAN. Senator, may I ask that I see the document that you are referring to?

Senator METZENBAUM. Certainly. Of course.

Mr. McKEAN. Senator, I am reading from page 21 of this hearing and the title is, "Potential conflicts of interest." And the answers that I have indicated would agree with your reading into the record that there was no conflict of interest. I do not believe that there was a conflict of interest then and I do not believe there is one now. And I would like to mention, Senator, that with regard to the U.S. Postal Service, it is a government organization that is a public-private enterprise.

Senator METZENBAUM. I understand that, confirmable by the Senate, is it not?

Mr. McKEAN. Yes, of course.

Senator METZENBAUM. And the inquiry there, the first question asks you about a list of your clients. I forget the other words that are used. And you give an answer that puts your corporation in between you and a direct answer to the question, when, would you not agree, Mr. McKean, that any reasonable person would have to include that it would be a matter of interest to the committee that was considering your nomination for confirmation, that you had been—that the two people who had recommended you for this position were indeed debtors, directly or indirectly of you.

Mr. McKEAN. They were not debtors of mine, Senator, and there was no connection whatsoever with the nomination. I did not consider it to be the type of thing which would influence my judgment were I to accept the appointment, nor did I consider it to be a factor in my selection. There simply was no connection whatsoever.

I am going to try as we go through these to convince you that I am qualified for the position to which I have been appointed.

Senator METZENBAUM. I have no way of knowing and I am not here to impugn your integrity nor your qualifications for the position. I am concerned about whether or not Mr. Meese, the appointee for the position of Attorney General, was directly or indirectly involved with your appointment, and in this case we know he was directly involved and we know that at that time you were the one that had arranged for him to borrow certain sums of money. And I think it has some relevance.

Mr. McKEAN. The facts are on the record, Senator; the fact is that the congressional committee on oversight for the Postal Service has gone into this matter and the General Accounting Office was directed by the Comptroller General to look into it. And I am now appearing before the highest legislative body in the land.

Senator METZENBAUM. It does seem to have evoked a considerable amount of interest.

Mr. McKEAN. It has evoked a considerable amount of interest, much more so than is convenient. [Laughter.]

Senator METZENBAUM. In June 1982 you billed Mr. Meese for $3,900 in interest due for the calendar year 1981 on the first $40,000 note. Is that correct?

Mr. McKEAN. That is correct, Senator.

Senator METZENBAUM. Now, actually the total interest that had been accumulated at that point was $9,300, was it not? $3,900 plus $5,400 for 6 months interest at 18 percent on $60,000. Right?

Mr. McKEAN. Yes.

Senator METZENBAUM. So you billed him only for the $3,900, not for the $9,300. Now, Mr. Meese did not pay that interest, did he?

Mr. McKEAN. Not at that time.

Senator METZENBAUM. Now, you state in your submission that the lender, "did not press for interest payments, and believed they were credit worthy and that the principal and interest would be paid."

Now, Mr. McKean, you are a certified public accountant. You are handling, according to you, someone else's money and you are lending that money out for them. When Mr. Meese first talked with you in June 1981 his situation, as I understand it, was the following. The total mortgage debt on his home—on two homes was $402,000. His total monthly payments, as shown by his statements, were $1,650, $1,659, $800, $159, or a total monthly payment due of $4,268 or a total annual payment of $51,216. Mr. Meese's White House salary was approximately $60,000. Did he reveal all of those obligations that he had?

Mr. McKEAN. We knew that he had obligations on two homes and right from the very beginning we knew that the home transaction was key. The problem was the key consideration; the disposal of a home was indeed a key consideration. The—regardless of the status of the LaMesa home, the McLean home had only the first mortgage on it, and the cash deprivation that he suffered was because of the fact that he was moving to Washington.

He was leaving to serve his country, and the transaction that we set up for him and arranged for him—and by "we" I mean my partner Cliff Kupperburg—involved loans which carried very high interest rates. Those very high interest rates remained throughout the term of the note. And in fact he ended up paying $23,340.12. I might suggest, Senator, that that is a high sum of money to pay.

Senator METZENBAUM. Let me ask a question. If Mr. Meese had been Mr. Jones or Mr. Smith and it was somebody that you knew had $51,216 in annual debt payments and had a salary at that time of $60,000, could you in good conscience have loaned out funds of a client of yours unless there were some special reason for doing so?

Mr. McKEAN. I want to be fully responsive to that, Senator, so if you will allow me to just make the distinction between Mr. Meese and Mr. Jones.

First of all, I have not yet met Mr. Jones; I met Mr. Meese. And I met him in the following circumstances. He was a person that was known in my community. He is from the Alameda County area. He grew up there. He went to school in the area. His father was the tax collector over there. The Meese family is known very well.

He is an attorney. His income potential was greater than was being manifested or recognized by the Federal Government. Nonetheless, he chose to come back here and serve his country and accept a fixed amount of income.

We considered that he was a highly visible person and that he was an honorable person. And finally I think it is important for me to point out that I met with not just Mr. Meese. I met with his wife also. We had the family's commitment to the fact that this payment was going to be made. We had a home situation that if made at that time would have been sufficient to have—if the home had been able to have been sold, we would have been able to liquidate this debt.

And in fact my judgment has been vindicated. I again would like to point out to you that we charged him 21 percent interest for 3 months, 18 percent thereafter. At all times we felt that the money was secure and we would be repaid. And it was repaid. So, to the extent that there may have been doubts about the judgment, they certainly have been vindicated. They have been paid.

Senator METZENBAUM. I think the facts speak louder than any editorial comment. I will just go on to some other questions.

Mr. McKEAN. Thank you, Senator.

Senator METZENBAUM. By June 1982 the situation had changed somewhat. Did Mr. Meese advise you that at that point, June 1982, when you sent him the $3,900 bill he had just secured a $21,000 fourth mortgage on his LaMesa home?

Mr. McKEAN. No.

Senator METZENBAUM. Did he advise you that he had not made any payments whatsoever on the three mortgages on the LaMesa home between March 1981 and May 1982 and that he was 15 months delinquent?

Mr. McKEAN. He may have discussed with me the fact that the home had not been sold. I certainly was—attempted to keep abreast of that particular transaction. I do not recall discussing the specific financing aspects of the home at all.

Senator METZENBAUM. So your answer is no, he did not?

Mr. McKEAN. He did not discuss that particular mortgage with me.

Senator METZENBAUM. I mean the fact that he was 15 months delinquent with respect to the three mortgages.

Mr. McKEAN. I do not recall any discussion of the number of months that the payment was behind. That is correct, Senator.

Senator METZENBAUM. Did he advise you that he was 4 months delinquent on his loan in Virginia?

Mr. McKEAN. No; he did not.

Senator METZENBAUM. Did he tell you that the $21,000 new loan was to bring those payments current?

Mr. McKEAN. He did not.

Senator METZENBAUM. Now, all these delinquencies were still there after you had loaned him $60,000 of that which you claim was your client's money and after Mrs. Meese had secured a $40,000 per year position bringing their income to more than $100,000 a year. Is that correct?

Mr. McKEAN. Yes.

Senator METZENBAUM. Now, let me ask you, when you made him the $40,000 loan and the $20,000 loan, were those not supposed to be used for the purpose of bringing his mortgage payments and his delinquencies current?

Mr. McKean. There was a significant amount of other debts at that time, Senator, in addition to mortgage payments that were behind.

Senator Metzenbaum. What were they?

Mr. McKean. I can only recall, but if you do not mind accepting my recollection, there was a requirement of a payment on the 1980 tax of some $10,000. At least that is what the amount was that was estimated in my conference. There was some tuition for his son that was to be paid later on during the year.

There were certain moneys that I recall, an item for improvement of $6,000. And, in other words——

Senator Metzenbaum. But we do not get close to using up $60,000 that way?

Mr. McKean. We get close to $41,200.

Senator Metzenbaum. $41,200?

Mr. McKean. Yes.

Senator Metzenbaum. Tell me how. I guess I did not hear you. I thought you said $10,000 for the taxes, about $6,000 for improvements on the home, and the tuition thing.

Mr. McKean. That is the trouble with an accountant, Senator. They remember the bottom line. I recall a list that we talked about with Mr. Meese of some $41,200 that was outstanding. Part of that was the mortgage payments that were listed at that time at least.

Senator Metzenbaum. But they were not paid, as I told you.

Mr. McKean. Senator, that is on the basis of information which you have provided me, yes.

Senator Metzenbaum. Mr. McKean, your chronology as submitted to the committee is rather detailed. But it omits one portion that is pointed out in the GAO report, and let me read you that portion.

"Mr. McKean"—this is from the GAO report.

Mr. McKean. May I have a page reference, please.

Senator Metzenbaum. Page 4.

Mr. McKean. Thank you.

Senator Metzenbaum [reading]:

> Mr. McKean indicated that he started to think about a longer term on the Board of Governors around midsummer 1982. He believed that a longer term would enhance his position to influence his effectiveness as a member of that body.
>
> Mr. McKean stated that he raised the subject of a longer term during separate discussions with Mr. Deaver and Mr. Meese while he was in Washington for a Board of Governors meeting. Mr. McKean said he was aware that a full nine year term would become available in December 1982 and that he had discussed his interest in the longer term with other members of the Board of Governors.

Would you be good enough to relate your conversations with Mr. Meese and Mr. Deaver over the long-term appointment.

Mr. McKean. Simply stated, the GAO report describes my recollection of the circumstances that existed at that time. The function of the Board of Governors of the U.S. Postal Service is to set broad policy for the U.S. Postal Service, and Congress, in instituting the Board of Governors as overseers, set our terms for 9 years. It so happened that when President Reagan took office, the first appointment that was available was one for an individual who had just left, and his term was expiring on December 8, 1986. And indeed, Senator, in all candor, I believe that people who are perceived as being on the Board of Governors for a considerable period of time are able to assert influence with regard to setting the policies for the U.S. Postal Service. I, by that time, had become familiar with the kind of contribution that I could make, and I thought that I owed it to the administration that appointed me to indicate that, in the appointment process, they were about to have some additional appointments that were coming on, and I think we can do some good.

Senator METZENBAUM. So you spoke with Mr. Meese and Mr. Deaver about obtaining the 9-year term appointment?

Mr. MCKEAN. Yes.

Senator METZENBAUM. And were Mr. Meese and Mr. Deaver the ones who got you the appointment in the first place?

Mr. MCKEAN. Yes.

Senator, may I add something to that answer?

Senator METZENBAUM. Sure; anything.

Mr. MCKEAN. Mr. Deaver was the one who called me. Mr. Deaver is the one who initiated the appointment. Mr. Meese's participation in this initial term, I have no understanding of how this worked at all. And I must say, Senator, that I learned more about the appointment process after the GAO report than I ever knew before.

Senator METZENBAUM. So that actually, it was really Mr. Deaver who got you the appointment in the first instance, and you do not give Mr. Meese any credit for it?

Mr. MCKEAN. It is not for me to decide whether Mr. Meese should receive credit or not.

Senator METZENBAUM. Well, do you think Mr. Meese had anything to do with your getting the appointment?

Mr. MCKEAN. I cannot answer that, Senator.

Senator METZENBAUM. Well, if you cannot answer it, why did you tell the Government Operations Committee the following:

> *Question.* Do you know why you were chosen for this nomination by the President?
>
> Answer. Members of the administration, namely, Mr. Michael Deaver and Mr. Edwin Meese, were aware of my background, and it is my understanding that my name was submitted to the President for nomination by these parties.

That is what you told them. You just told us that it was only Mr. Deaver who was involved.

Now, what are the facts, Mr. McKean?

Mr. MCKEAN. Senator, my focus in answering you was on the extension of the term, that is, to the 9-year term.

Senator METZENBAUM. No, that was not what I asked you. I asked you who got you the appointment originally.

Mr. MCKEAN. Then it may have been my mistake, Senator, in response.

Senator METZENBAUM. On July 23, 1983, Charles Babcock of the Washington Post reported on your arranging the loans for Mr. Meese and Mr. Deaver. Do you recall being interviewed by telephone by Mr. Babcock prior to the publication of his article?

Mr. MCKEAN. Yes.

Senator METZENBAUM. The article states, quote: "McKean said Meese is 'doing all right on the interest payments'."

Is that an accurate quote?

Mr. McKEAN. Yes.

Senator METZENBAUM. At that point, July 23, 1983, Mr. Meese owed approximately $20,000 in interest and had made no interest payments for more than 2 years.

Is that correct?

Mr. McKEAN. That is correct.

Senator METZENBAUM. Mr. McKean, maybe you and I speak a different language, or have a different opinion about matters of this kind. But what do you mean when you say he is "doing all right" and has not paid a penny of interest for over 2 years?

Mr. McKEAN. By that time, Senator, we had planned to take the amount that was owed in interest as of June 30, 1983, and roll that over into a new note, proceed to obtain a secured loan on his residence in McLean, which of course was an option available to us at all times, because there was only a first loan on that property, and the distinction made between "doing all right" and payment is a turn of the phrase, I should say.

Senator METZENBAUM. A what?

Mr. McKEAN. Just a turn of the phrase.

Senator METZENBAUM. A turn of the phrase. You would say that somebody who had not made any interest payments for over 2 years was "doing all right"——.

Mr. McKEAN. With a secured debt, and having agreed to add it to the mortgage.

Senator METZENBAUM. What secured debt? What security was there at that point, July 23, 1983?

Mr. McKEAN. The McLean property had only the first loan. I do not wish to overrepresent the situation, Senator. It is my mistake in attempting to—perhaps I have confused you.

The secured debt did not exist at that time, but there was an agreement with Mr. Meese that that is what would be done.

Senator METZENBAUM. I do not think I was confused, Mr. McKean. You talked about there being—in connection with a secured debt, you would not have to worry about getting the money, but the fact is, at that moment, there was no secured debt, and you were just talking about securing it, and at that point, Mr. Meese was greatly in arrears in his obligations. So that when you said he was "doing all right," isn't it the fact that you misstated the case?

Mr. McKEAN. Senator, that is an unfortunate characterization, but it is a question of interpretation. I have defined what I think is "all right," and you have defined what you, think is "all right," and I bow to your judgment.

Senator METZENBAUM. I will not editorialize.

Now, Mr McKean, in the article, you also are quoted as saying, "with the situation like it is, we will likely consolidate the loans and have them collateralized against his Virginia home."

Is that an accurate quote?

Mr. McKEAN. Yes.

Senator METZENBAUM. OK. Now we have a letter dated August 10 from American Home Funding, Inc. Are you familiar with that letter—do you have that with you?

Mr. McKEAN. It is helpful, Senator, if I could have a copy of it in front of me, if that is not inconvenient.

Senator METZENBAUM. Perhaps if we show it to Mr. McKean, he will feel free to answer in connection with it without having it in front of him, because I am not going to ask but about a word or two.

[Staff handing document to Mr. McKean.]

Senator METZENBAUM. Does that letter look familiar to you, Mr. McKean?

Mr. McKEAN. Of course.

Senator METZENBAUM. All right. May I have it back, please?

Now, evidently, from the statements in the letter, you called the company on August 9, 1983; is that correct?

Mr. McKEAN. My recollection is that a telephone call preceded the receipt of that letter by a day or two.

Senator METZENBAUM. The reason I say that is that it says, "as we discussed by telephone yesterday," and the letter is dated August 10.

Mr. McKEAN. Yes. Of course, that is the representation of that institution, but I recall a telephone call with the party there within a day or so of receipt of their letter.

Senator METZENBAUM. And this is a letter from American Home Funding, Inc. to Mr. John McKean, dated August 10, 1983.

Now, Mr. McKean, why did you call this company?

Mr. McKEAN. There was an attempt—I am at a disadvantage in not having the letter in front of me, Senator——

Senator LAXALT. We have a copy.

[Staff handing document to Mr. McKean.]

Mr. McKEAN. Thank you, Mr. Chairman.

Senator METZENBAUM. The question I have is why did you call American Home Funding, Inc., in Annandale, VA?

Mr. McKEAN. Are you ready for a response, Senator?

Senator METZENBAUM. Yes.

Mr. McKEAN. Through a lawyer friend in San Francisco, I asked if he knew of any loan broker who could put me in touch with a financing institution on the east coast. The name of American Home Funding came to me. I made the telephone call and, as this letter indicates, there was an immediate response by a party by the name of Freida DeHart, who was the senior vice president of the American Home Funding, Inc., and they are located in Annandale, VA.

Senator METZENBAUM. Do you know whether American Home Funding brokered any loans for Great American Savings & Loan?

Mr. McKEAN. I do not.

Senator METZENBAUM. Did you call anybody that had any relationship with Great American Savings & Loan to find the name of this institution?

Mr. McKEAN. No, Senator.

Senator METZENBAUM. Now, Mr. McKean, let me read you some of the statements in here.

> DEAR MR. McKEAN: As we discussed by telephone yesterday, you will find the necessary paperwork enclosed to initiate application for a second trust. It is my understanding that an $80,000 loan is desired.

They then ask for some information—or, no—they tell you the terms.

Then they go on to say:

> A credit report will be ordered very discreetly through a small reporting agency whose officers we have known for several years, unless other recommendations are made by you.
>
> Please rest assured that your transaction will be handled in the most confidential manner possible. The integrity of our firm has been established through many years of personalized service.

Now, this is another instance that causes me to have some questions about whether this is special treatment, and I have difficulty coming to any conclusion other than that.

You and this firm, according to this letter, appear to be concerned that the loan might not be approved unless the matter was handled discreetly, and they wanted to be sure they received the right credit report.

Now, if you did not like the credit agency, they were willing to use yours.

Now, I am frank to say to you that I am impressed. You did not know these people. They are willing to use your credit agency. The whole matter is going to be handled very discreetly, confidentially, and most people who borrow money are usually at the mercy of the creditor. But one of the issues that has been raised in connection with Mr. Meese's confirmation is whether or not he has been accorded special treatment.

I wonder if you would care to respond, and tell us how it was that American Home Funding was willing to let you choose the credit agency. In all of my lifetime experience, I have never heard of a borrower who was able to get the lender to agree that the borrower could choose the credit agency.

My question is did Mr. Meese's loan in this instance again receive special treatment?

Mr. McKEAN. Senator, may I quote from other parts of this letter?

Senator METZENBAUM. Of course.

Mr. McKEAN.

> Here are the restrictions upon this loan. The combined first and second trust cannot exceed 85 percent of the appraised value. The interest rate will be 14.5 percent, based on 30-year amortization, with a five-year balloon, in other words, not a fully amortized loan. The total points will be 3½. If you prefer, you may elect a 15-year, fully amortized loan at 15 percent and also 3½ points.
>
> Private mortgage insurance will be required. The initial premium will be $264, and on a monthly basis, there will be a $22 premium charged on an $80,090 loan.

It then goes on to indicate that the appraisal will be prepared by a staff appraiser, which means that American Home Funding was going to decide if the loan-to-value ratio was correct.

And finally, I do not believe I had any influence in the final process of loan granting through American Home Funding at all. I might mention, Senator, that this loan application was withdrawn because, presenting it to Mr. Meese, the interest rate appeared to be higher than they were willing to pay, and they produced their own financing.

Senator METZENBAUM. Well, as a matter of fact, the terms that you mention are very much normal for second mortgage instruments in the Virginia area, as I understand it. The real question has to do with whether or not they were not using an independent appraiser. As you pointed out, they used a staff appraiser. You could choose the credit agency. The whole matter would be done very confidentially.

And I am not saying that it was special treatment, but I am just curious as to whether you did not think they had some indications of that, particularly in view of your ability to choose a credit agency.

I might ask you in that respect, to the best of your recollection, do you ever remember the lender giving the borrower the right to choose a credit agency?

Mr. McKEAN. I never remember selecting a credit agency for a borrower.

Senator METZENBAUM. That is right.

Mr. McKEAN. And in this case, obviously, we did not, nor did we offer to, with regard to——

Senator METZENBAUM. OK, but they gave you the right to.

Mr. McKEAN. Yes, Senator.

Senator METZENBAUM. Mr. McKean, you provided the GAO and this committee a letter to Mr. Meese from your partner, Simon Teng, along with a blank note. Now——

Mr. McKEAN. Senator, may I return this letter? Are we finished with the questioning on this?

Senator METZENBAUM. Yes. It belongs in the committee files.

Mr. McKEAN. Just before it leaves my possession, may I make one final comment with regard to that?

Senator METZENBAUM. Of course; anything.

Mr. McKEAN. I have been accepting a line of questions which have to do with the fact that I would select the credit agency, when in fact, the actual reading of the sentence says, "A credit report will be ordered very discreetly through a small reporting agency whose officers we have known for several years, unless other recommendations are made by you."

I think what that means is that if I selected one that I recommended, they would then take it back and decide if they thought it to be an authentic organization, and they may indeed have taken some action with regard to that.

Finally, Senator, we did not get this loan; we did not use this. And I never spoke to Ms. DeHart ever before in my life.

Senator METZENBAUM. I know that you did not get the loan, but you will agree that the language, "unless other recommendations are made by you," was giving a creditor some choices that debtors normally are not accorded. But you need not comment further.

Mr. McKean, I think you have in your file a copy of the June 10 letter from your partner, Simon Teng, to Mr. Meese, reading as follows:

> DEAR ED, In accordance with the terms of the notes dated September 30, 1982, I have brought the interest accrued up-to-date. See attachment 1 attached.
>
> In order to reduce the interest cost, I have arranged to have the notes secured by a second deed of trust on your home. See attachment 2 attached.
>
> In order to have the deed of trust recorded, I will need the legal description of your home. Please provide me with the escrow documents, a copy of the deed of trust on the first mortgage, and I will be able to take care of the rest.
>
> Very truly yours,
>
> SIMON TENG.

That is an unsigned letter, and then with it is a note in the sum of $80,000, also unsigned, from Edwin Meese and Ursula Meese, to "Blank"—"While jointly and severally promise to pay to 'Blank' or order the sum of $80,000."

Are you familiar with those instruments?

Mr. McKEAN. I have the document before me, yes, Senator.

Senator METZENBAUM. My question is, what were the circumstances of those letters being sent to Mr. Meese?

Mr. McKEAN. Well, we had come up to the June 30 date, or were heading toward the June 30 date, and it was necessary to decide what was going to be accomplished with regard to the rolling over of the interest into another loan that would be secured by the McLean property.

I do not recall whether you referred to the third document that was attached, Senator—there was another document attached.

Senator METZENBAUM. Tell me about that. I do not have that, Mr. McKean.

Mr. SHORT. Is that the worksheet, Mr. McKean?

Mr. McKEAN. Yes, it is.

Senator METZENBAUM. I guess we do have it. Let me get it out. Yes. This consists of a number of—it is a worksheet. Yes, I have that. Go right ahead.

Mr. McKEAN. May I describe it, Senator?

Senator METZENBAUM. Sure.

Mr. McKEAN. The two notes that had been signed as of September 30 appear as the first two entries on this worksheet. They are, by the way, referred to in lines 1 and 2. On line 3, we have the interest accumulated from July 1, 1981 to September 30, 1982, of $12,000. And then we have the additional interest for the period October 1, 1982 through June 30, 1983. The total sum of all of those numbers is $80,100.

And the date of the letter and the circumstances of its creation are the rollover part of this transaction we were talking about, that is, adding it to the original principal and coming up with the sum of $80,000 so that a second deed of trust could be taken out on the McLean property.

Senator METZENBAUM. And who was going to make the loan at that time?

Mr. McKEAN. The idea was to shop around for the best interest rate.

Senator METZENBAUM. Well, the note says 13 percent, doesn't it?

Mr. McKEAN. That was a desired rate, but we had no takers at 13 percent in the way of financial institutions, that's for sure.

Senator METZENBAUM. Well, now, let me ask you, you were interviewed by Charles Babcock of the Post on July 25, and you appeared to be talking about collateralizing this loan in the future tense. Yet these documents are dated 6 weeks before your conversation with Babcock.

One has to question whether these documents were backdated, or what were the circumstances. If you sent these papers out to Mr. Meese to be signed, why aren't you at that point saying to Babcock that the loan has been arranged, or is being negotiated, but you are talking about collateralizing this loan in the future tense.

I am confused.

Mr. McKEAN. Well, it had not been done, Senator.

Senator METZENBAUM. Pardon?

Mr. McKEAN. It had not been done. The letter says, "Send us a legal description of the property, and we will be able to take care of the rest."

It might be helpful if I pointed something else out to you, Senator——

Senator METZENBAUM. This is 2 months before the American Home Funding negotiations take place?

Mr McKEAN. Yes; remember, we were coming to the June 30 date, Senator. That was the date that we were concerned about, and the worksheet attached indicates that we were attempting to bring the interest through June 30, knowing full well that in the 20 days remaining in June, it was impossible to accomplish the issuance of a deed of trust and securing.

There is one document reference that I would like to make to you, Senator, if I could. The worksheet, in the upper right-hand corner—we all know how precise accountants try to be. This is my partner, Simon Teng, who has been with me for 15 years, and he put the date of June 10, 1983.

Senator METZENBAUM. I am not sure that I follow the point you are making.

Mr. McKEAN. I am only saying that as to whether the document was back-dated, (a) it would be Simon Teng who would have had to accomplish the back-dating, and (b) my trust level in Simon Teng is such that I would not think that that occurred.

Senator METZENBAUM. And Simon Teng and Mr. McKean and Mr. Kupperberg and Mr. Callaghan are all partners. Did he have any interest in that money that had been loaned out to Mr. Meese?

Mr. McKEAN. No; I think what you just said is that Simon Teng is my partner, and what I said is that my trust level in him is such that I would not have thought that he would have back-dated it, and I do not think that it is inconsistent to say that he is my partner, in that if you are going to have trust in anyone, it ought to be your partner.

Senator METZENBAUM. Well, I guess I have a little difficulty in understanding actually how he fits in the picture, because it is Mr. Kupperberg's money that is involved, and it is Mr. Kupperberg who has to be concerned about getting paid off, according to you. And you have indicated that it was not really a partnership understanding, and yet we find now two of the partners besides yourself involved in connection with this loan, and we begin to wonder whether or not the partnership had more than a professional relationship, or actually was more involved as far as being the borrowers and the creditors.

Mr. McKEAN. I can understand. As always, my inability to answer you properly is due to my own density and not to any problem when I finally understand the question.

For the reasons of just ministerial purposes, Simon Teng, who has no other relationship to this transaction, made the computation of what the interest is, and as a convenience to me, sent it out to Mr. Meese.

Senator **Metzenbaum**. Mr. McKean, $23,000 in interest was paid after the publicity broke, and the matter started to become a public issue. Who is going to show that on their tax return?

Mr. **McKean**. The sum was $23,340.12. And who will show that on their tax return is the lender.

Senator **Metzenbaum**. And who is that?

Mr. **McKean**. The party identified as Mr. Abe Kupperberg.

Senator **Metzenbaum**. So it will be he who will be showing it?

Mr. **McKean**. Yes, sir.

Senator **Metzenbaum**. Now, finally, Mr. McKean, you have submitted a copy of a letter dated February 22 of this year to Mr. Meese, billing him for the final interest payments and accrued and compounded interest. Now, up until that point, up until February 22 of this year, there has never been one mention by you or Mr. Meese or anybody of interest on interest. And yet, you also submitted a copy of a check Mr. Meese sent you. Your chronology shows that Mr. Meese called you about February 14 and said he was sending this check.

Now, the question that I have is, Was this just an afterthought, that Mr. Meese would pay you interest on interest, and it would look much better that way, or was it something that had always been in your mind—and if it was always in your mind, how come it never was mentioned in any communication? How come it wasn't mentioned publicly—mentioned at all—until your letter of February 22 of this year?

Mr. **McKean**. Senator, we at all times considered that an act of delayed interest was taking place, and the rate of interest was so high—18 percent throughout the term of the note—that it was never a serious consideration in the sense of requiring immediate payment for the forbearance. It was understood with regard to the final computation of interest that something of this kind would take place.

Senator **Metzenbaum**. How was that understood? Who discussed it, when, and what confirmation is there of that discussion?

Mr. **McKean**. I have no confirmation of that discussion. I can only say that we mentioned to Mr. Meese that, upon the payment of the $80,100 sum, that there was due also the sum of $2,250—perhaps I can go back a bit, if you do not mind, Senator.

On September 15, 1983, we received a check for $80,000. We had received $100 prior to that, sometime in August 1983. And immediately upon receipt of that check, we billed Mr. Meese for the interest from July 1 until September 15. He owed $2,250. And I can only say that sometime between September 15 and the date of actual payment of the check in the amount of $3,340.12, the subject of interest on interest was brought up.

Senator **Metzenbaum**. So it was brought up just within the last several weeks?

Mr. **McKean**. It was paid within the last several weeks, Senator. My testimony is that it was brought up sometime during the period September 15, 1983.

Senator **Metzenbaum**. Didn't Mr. Meese call you on the 14th of February, 1984?

Mr. **McKean**. Oh, yes.

Senator METZENBAUM. And did Mr. Meese at that time indicate to you that he thought he ought to pay interest on interest?

Mr. McKEAN. What he indicated was that he was about to pay it.

Senator METZENBAUM. Well, didn't he indicate to you at that time that it had been suggested to him that he pay the interest on the interest?

Mr. McKEAN. I do not recall him saying that somebody suggested it to him. I only tell you that he suggested that he was going to pay it at that time.

Senator METZENBAUM. And we have your notes indicating the interest on the interest as of February 14. There is nothing in your notes indicating the matter of interest on interest until Mr. Meese is up for appointment as Attorney General, and it becomes a public issue. And then we find Mr. Meese calls you and indicates he is going to pay interest on interest, and then, on February 22, he sends you a letter, enclosing his check in order to pay the interest on the interest—is that right?

Mr. McKEAN. That is correct, Senator.

Senator METZENBAUM. I have nothing further, Mr. Chairman.

Senator LAXALT. Senator Mathias?

Senator MATHIAS. Mr. McKean, this is not an easy proceeding for you, I know. Is there anything that you think this committee ought to know that in any way relates to this matter that has not been disclosed up to this time?

Mr. McKEAN. I may have a problem with relevance, Senator, but if you would allow me to be fully responsive, I can answer that.

The appointment which took place, in my judgment, had nothing to do with the transactions that are on the record. I think that the Government received a qualified appointee, and that I have done my best to function on the Board of Governors.

The process of functioning as a member of the Board of Governors requires a considerable outlay of time. I am delighted that my colleagues selected me as the Chairman of the Board of Governors, and by that process, showed their confidence in me.

I have nothing further to add to the circumstances of the specific transactions. It was a business deal. I did a job for my client, and it is the type of service that we ordinarily render.

Senator MATHIAS. You say it is a business deal. How were you compensated for your services in the deal?

Mr. McKEAN. We billed for hourly services for Mr. Meese.

Senator MATHIAS. And have you been paid?

Mr. McKEAN. Yes.

Senator MATHIAS. At your regular hourly rate?

Mr. McKEAN. Consistent with the service that we rendered, yes.

Senator MATHIAS. Why did you feel it was necessary to maintain confidentiality on the Meese loan?

Mr. McKEAN. Interposing myself as the trustee was something that I thought of myself, frankly, Senator. I can only go to my state of mind at the time that the transaction was discussed. I felt that direct dealings by Mr. Meese with the financing institutions might have created an environment in which they would expect something. It is, perhaps, the irony of all ironies that, as a result of that attempt, a great deal of attention has been given to a transaction which I felt was perfectly innocuous.

Senator **Laxalt**. Would the Senator yield on that point for just one moment, as a matter of clarification?

Senator **Mathias**. Surely.

Senator **Laxalt**. Isn't it true, Mr. McKean, when you provided the various instruments and chronology and everything else, that you requested of this committee that the name of Mr. Kupperberg be provided and protected in confidence?

Mr. **McKean**. Yes.

Senator **Laxalt**. And unfortunately, that pledge was not kept by this committee, because that name became public—and I do not know and do not particularly care, but isn't that the framework in which the name was revealed originally?

Mr. **McKean**. Yes.

Senator **Laxalt**. If I may, Senator Mathias, perhaps at this point it would be relevant for me to read a letter that we received from Mr. Kupperberg after he became public in this situation. It is addressed to the chairman.

> At the request of the Judiciary Committee staff, I am providing the following information.
>
> My son, Clifford Kupperberg, is a partner in the firm of John R. McKean, Accountants. From time to time, I have made funds available to my son, with instructions that he make investments on my behalf. In 1981, I provided $60,000 to my son for investment purposes. At that time, my son informed me that he was lending the funds I provided to clients of his accounting firm. He informed me that these clients were creditworthy and that they were going to be paying an interest rate of 21 percent through September 1981 and 18 percent or the prime rate, thereafter.
>
> He did not, however, inform me of the identity of the clients, and I did not seek this information from him. In the summer or fall of 1983, my son informed me for the first time that the funds that I provided in 1981 were lent to Mr. and Mrs. Edwin Meese. I have never had any contact with Mr. and Mrs. Meese, and other than providing the funds lent to them, I have never had any business or personal relationship with them. I do not know whether they know that I was the source of the funds which they borrowed.
>
> In September 1983, I received from my son a check in the sum of $80,100. This check represented the return of the $60,000 I had provided to him in 1981, plus $20,100 in interest.
>
> On February 28th, 1984, I received from my son a check for $3,430 in additional interest.
>
> I have no contracts with the Federal government. I hope this information fully meets your needs.

I thank the Senator.

Will you please continue?

Senator **Mathias**. Well, that intervention by Senator Laxalt raises this further question. Did Mr. Meese know the identity of either of the lenders?

Mr. **McKean**. No.

Senator **Mathias**. So the veil of confidentiality was complete. And did they know who he was?

Mr. **McKean**. At some juncture, Clifford Kupperberg undoubtedly revealed the name of Mr. Meese to his father—not at the outset, is the way Clifford Kupperberg represented it to me.

Senator **Mathias**. One of the lenders was the Pension Trust that you mentioned.

Mr. **McKean**. That was one of the lenders of the investment pool, Senator, yes.

Senator **Mathias**. But the veil of confidentiality prevailed all along the line.

Mr. **McKean**. Well, with regard to Mr. Meese, at all times, he dealt with me, and he still does not—of course, after today, I imagine the account of this will be such that even he will know it—but it is, after all, all paid now, and Mr. Kupperberg's letter that was read into the record causes me to recall that the total amount of the interest may have been—if I did not read the correct number into the record before, it is $23,440.12.

Senator **Mathias**. Now, you told Senator Metzenbaum, as I recall, that as the trustee, or the so-called trustee, you received no income of any sort.

Mr. **McKean**. Not from the trustee function; yes.

Senator **Mathias**. What was the motive in undertaking this, if it was not going to be a compensated business transaction?

Mr. **McKean**. Well, we do tax and financial planning for clients of ours, and it is something of a service to clients if we are able to put a lender with excess funds together with a borrower who is creditworthy.

Senator **Mathias**. Do you charge a finder's fee, or do you charge some other compensation for this service?

Mr. **McKean**. On an hourly basis is all—it is just the hourly services of the firm, Senator.

Senator **Mathias**. How did you happen to be chosen from among your partners as the one to be the trustee in this situation?

Mr. **McKean**. I chose myself.

Senator **Mathias**. You were a volunteer.

Mr. **McKean**. Yes, Senator.

Senator **Mathias**. What is your present relationship with your old accounting practice?

Mr. **McKean**. My old accounting practice remains my accounting practice, Senator. Perhaps the service to the Board of Governors could be explained.

It is a part-time position with the U.S. Postal Service, involving meetings once a month, and I retain the accounting practice and continue to function as its President.

Senator **Mathias**. Is Mr. Meese still your client?

Mr. **McKean**. Yes; he is, Senator.

Senator **Mathias**. Is Mr. Deaver still your client?

Mr. **McKean**. Yes; he is.

Senator **Mathias**. When you got the questionnaire from the Committee on Governmental Affairs at the time of your confirmation hearing—it is a rather daunting list of questions, as I recall it—did you sit down with pencil and paper and answer it all yourself, or did you seek somebody's advice?

Mr. **McKean**. Some parts of it, I had other members of the firm help me with—for example, compiling the list of clients that I think had over $5,000. I still do not recall whether that was a part of the Senate committee's request, or whether that was a part of the financial disclosure. But that particular schedule of attachment, I recall getting some help with.

Senator **Mathias**. And from whom did you get the help?

Mr. **McKean**. Again, it would have either been Simon Teng or our financial secretary, Emilia Bustichi.

Senator **Mathias**. But in any event, it was someone within the firm?

Mr. McKEAN. Yes. If you have trouble with the spelling of that name, it is B-u-s-t-i-c-h-i.

Senator MATHIAS. I am sure the reporter will be grateful for that.

Did you discuss with them at any time whether or not your relationship with Mr. Meese and Mr. Deaver should have been included on that form?

Mr. McKEAN. With the people who assisted me in the preparation of the report, Senator—is that——

Senator MATHIAS. Yes.

Mr. McKEAN. I must confess, Senator, it never occurred to me that there was anyplace in which the client relationship needed to be disclosed, unless it exceeded a certain dollar sum. And indeed, the questions are daunting. They are accompanied, of course, by a financial disclosure which precedes that. There is an FBI investigation. It had been my first experience with the Government, and I thought that there was a complete disclosure as regards the source of my appointment right from the very outset.

So that is the best explanation I can give you.

Senator MATHIAS. Thank you very much.

Mr. McKEAN. Thank you, Senator.

Senator LAXALT. May we recap your testimony for a moment, Mr. McKean?

Mr. McKEAN. Yes, certainly.

Senator LAXALT. As I understand this testimony, you originally became aware of Mr. Meese through Mr. Deaver——

Mr. McKEAN. That is correct.

Senator LAXALT [continuing]. Who had previously been a client of yours.

Mr. McKEAN. That is correct.

Senator LAXALT. And this resulted in a joint tax and investment meeting with Mr. Meese; is that correct?

Mr. McKEAN. That is correct—and Mrs. Meese, Senator.

Senator LAXALT. And Mrs. Meese. And it was apparent then that they were in deep financial difficulty.

Mr. McKEAN. That is correct.

Senator LAXALT. He is here serving as Counselor to the President, and really, in many respects, cash-flow-wise, is on the brink of bankruptcy; is that correct?

Mr. McKEAN. That is correct.

Senator LEXALT. I mean cash-flow-wise.

Mr. McKEAN. There were assets, but cash-flow-wise, the problem had to do with the two houses.

Senator MATHIAS. Would you call it a liquidity problem?

Mr. McKEAN. I accept the Senator's designation. It was a liquidity problem.

Senator LAXALT. In any case, you offered tax advice. To the extent of the withholding, obviously, they were taking too much, which did not help his cash flow problem, and that was reduced accordingly, based upon his expected taxes. Right?

Mr. McKEAN. That is correct.

Senator LAXALT. And at that time, you had available to you, totally divorced from the Meese transaction, investment funds.

Mr. McKEAN. That is correct. I guess it helps the record if we indicate that that money came up in May of 1981, long before I had ever met Mr. Meese.

Senator LAXALT. Well, I think it is clear that we make this point, that there was not a nest created here clearly for the purpose of your assisting the Meese situation with a newly created pot; that was inplace.

Mr. McKEAN. I thank the Senator for that clarification.

Senator LAXALT. It was a working trust situation, and some of the money had been used for other purposes, I assume?

Mr. McKEAN. That is correct.

Senator LAXALT. And so, when you finally came to this point and examined the Meese situation, you found good people in a desperate plight. And I suppose if you are talking about special privilege, perhaps in this case, it was in order. Here is a dedicated public servant who is strapped financially, who has a two-house problem, and he needed help desparately. That had to be the total situation. I hope you did not treat him like a computer, and that these nice people are treated in human terms, as well.

Mr. McKEAN. That is right.

Senator LAXALT. So this finally resulted, then, in a transaction where you are really giving them bridge money; in fact, the whole context of this would be that eventually they would bail out by getting rid of the California house.

Mr. McKEAN. Yes. If anything, considering the rate of interest and all, but for the fact that the situation involves Mr. Meese, the interest rate was kept high all the way through the transaction; he ended up paying all of it, too.

Senator LAXALT. And he paid going rates. This was not a "sweetheart" interest situation, to be sure, because they ended up paying $23,340 in interest.

Mr. McKEAN. Yes.

Senator LAXALT. And this is on a Federal income, salary, at that time of roughly $60,000?

Mr. McKEAN. Yes—a fixed salary, too, which, while Mr. Meese in his previous occupation could have supplemented his income with honoraria, he had no such opportunity here.

Senator LAXALT. Right. But the point that has to be made here is that in this whole situation, whether you are dealing with the California house and the various mortgages that were laid on that house, and this McLean situation, represented in the total situation, there has always adequate security; isn't that true?

Mr. McKEAN. That is correct.

Senator LAXALT. And that certainly was a prime motivation of yours. You were not putting it down a sink-hole, because that would violate your fiduciary responsibility to the people on the trust.

Mr. McKEAN. I would not have done that to Clifford Kupperberg; that is right.

Senator LAXALT. And the bottomline is they were finally paid, and paid handsomely, at enormous interest rates.

Mr. McKEAN. That is correct, Senator.

Senator LAXALT. Now, I do not know whether Senator Metzenbaum is trying to create some kind of impression here that, by reason of the Babcock interview, the Washington Post interview—which my records indicate was July 25, 1983—when the Meese financial plight was coming to light, that suddenly, there was a lot of scurrying around in order to extricate yourself from that situation.

But the plain fact of the matter is that when you made the statement in connection with the interest payment being all right, or in effect saying that, wasn't that in the context of your having previously considered and having transmitted to him a rollover loan?

Mr. McKEAN. Yes.

Senator LAXALT. And that was several weeks before—my notes indicate that that rollover loan and the correspondence was on June 10 of 1983.

Mr. McKEAN. The documents with respect to June 10 were executed on June 10, 1983, and the loan was attempting to be put forth at that time.

Senator LAXALT. But my point is this, that the Babcock Washington Post interview did trigger putting that loan together——

Mr. McKEAN. No.

Senator LAXALT. That was already in place?

Mr. McKEAN. That is right.

Senator LAXALT. And you had put into place a $20,100 interest allocation as of June 30, and the Babcock interview was on July 25.

Mr. McKEAN. That is correct.

Senator LAXALT. I think it is important that this record establish and all concerned know that it is not simply because there was a Washington Post interview, that because of that, you went ahead and did all these fine and grand things and finally packaged this loan. As a business matter, that was already in place and going.

Mr. McKEAN. I can tell you absolutely, Senator, that the documents that are in this record, dated June 10, 1983, were executed on June 10, 1983, and they were indeed in place.

Senator LAXALT. Senators, at this point, I would like to include several of these papers, indicating the so-called McKean chronology of these various transactions. I think counsel and Senator Metzenbaum, and perhaps Senator Mathias, are familiar with them, and I think this would be an appropriate time to put them in the record.[1]

Senator METZENBAUM. Without accepting the reliability of them as factual, I have no objection to their being included in the record.

Senator LAXALT. We understand that.

Now, in connection with your appointment, the chairman at the outset of this hearing asked you the categorical question whether or not there was any connection between the business transactions that were conducted here and your eventual appointment.

I will ask you the same question. Was there any connection whatsoever between these two transactions, or for that matter, the Deaver transaction on the Peterbilt shelter?

Mr. McKEAN. There was no connection whatsoever. They were two entirely separate matters. I never had in my mind at all the idea of receiving an appointment, and it was a complete surprise, Senator.

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[1] Can be found on page 79.

Senator Laxalt. Had you had a continuing interest in the Postal Service Board of Governors? What is the history of that? It is a rather unusual group.

Mr. McKean. I have found out that it is quite unusual when you get over there——

Senator Laxalt. Were you aware of it prior to all this occurring?

Mr. McKean. Not at all, Senator, not at all.

Senator Laxalt. And you have indicated before that this is a part-time position.

Mr. McKean. Yes; it is a part-time position.

Senator Laxalt. I think the record ought to indicate what you are paid in this part-time position.

Mr. McKean. Well, this morning, I chaired a meeting over at the Postal Service for a few hours. We had committee meetings through the middle of the day. I am paid $300 for that. Yesterday, I was the chairman of another meeting, and for that meeting, I am paid $300. This trip on postal matters, and believe it or not, this committee——

Senator Laxalt. That per diem, as I understand it, is limited to a 30-day period.

Mr. McKean. It is limited to 30 days. There is an annual stipend of $10,000.

The total time commitment to the Postal Service on this trip is going to be about 5 days. Prior to that, on other monthly meetings, I would imagine we are talking a minimum of 4 days, in addition to the work that we do at the San Francisco office, my office, in preparing for the meeting.

Senator Laxalt. Last, let me ask you this—yes, Senator?

Senator Mathias. Just to complete it, it is an annual salary of $10,000.

Mr. McKean. Yes.

Senator Mathias. That is your retainer?

Mr. McKean. That is the word I would use, yes.

Senator Mathias. And then you get a $300 per diem for committees where you actually appear and perform services as a member of the Board?

Mr. McKean. Senator, that is very close to being accurate, but in fact what it means is that you get $300 for each meeting, and any work that is done over and above that is on your own. You have a cap on the number of meetings that you could attend of 30, so the potential compensation that you could receive from this is $19,000 a year, and my 1983 income was probably closer to $17,000 because, while there was other work done, they did not constitute meetings.

Senator Metzenbaum. You get expenses, too.

Mr. McKean. Yes, Senator.

Senator Laxalt. Last, let me ask you this, and I think the chairman asked you, as well. In all the transactions in which you have been involved with the nominee, Ed Meese, is there anything in your association, directly or indirectly, that in your opinion would cause him to be less than fully qualified to be Attorney General of the United States?

Mr. McKean. No, sir.

Senator **Laxalt**. I think that is all I have now.

Senator **Metzenbaum**. Did you indicate—did I hear you say to Senator Laxalt that a new loan agreement was entered into as of June 10, 1983?

Mr. **McKean**. The Senator continues to earn my admiration.

What I said was that there was a loan in place, and I think that was in response to Senator Laxalt's question. What I meant, of course——

Senator **Metzenbaum**. Well, "in place," means you made a loan.

Mr. **McKean**. Well, "in place," in the sense that we had provided him with the information upon which we would be able to obtain a loan, and the letter of transmittal speaks for itself——

Senator **Metzenbaum**. Mr. McKean, there was no loan made on June 10, 1983, was there?

Senator **Laxalt**. And that was not his testimony.

Senator **Metzenbaum**. He said a loan in place, Paul. Now, a loan in place means he made a loan.

Senator **Laxalt**. Let the witness speak for himself, let the witness speak for himself.

Mr. **McKean**. If I may paraphrase the letter of transmittal written by Simon Teng—I am not going to be allowed to paraphrase it; I will read it to you.

> Dear Ed, June 10, 1983, In accordance with the terms of the note dated September 30, 1982, I have brought the interest accrued up to date. See attachment 1 attached.
>
> In order to reduce the interest cost, I have arranged to have the note secured by a second deed of trust on your home. See attachment 2 attached.
>
> In order to have the deed of trust recorded, I will need the legal description of your home. Please provide me with the escrow document and copy of the deed of trust on the first mortgage, and I will be able to take care of the rest.

So, the document speaks for itself, Senator. I accept any interpretation that you wish. We did not have the legal description, we did not have the escrow, and we did not have a fully executed loan recorded.

Senator **Metzenbaum**. And 20 minutes ago, you said that that was being signed in blank, and you were going to try to place it, but you were putting in a 13-percent rate; isn't that correct?

Mr. **McKean**. What my testimony was was that we were going to shop around and see if we could get a 13 percent rate.

Senator **Metzenbaum**. But Mr. Teng put 13 percent into the note.

Senator **Laxalt**. That was a hopeful rate. He has testified to that, Senator.

Senator **Metzenbaum**. I understand, but please—I did not interrupt you.

Senator **Laxalt**. All right.

Senator **Metzenbaum**. Now, then, that loan is never consummated, is it?

Mr. **McKean**. It did not need to be, of course—it was never consummated, I agree, yes——

Senator **Metzenbaum**. Was it consummated?

Mr. **McKean**. No.

Senator **Metzenbaum**. Now, Charles Babcock writes an article on July 23—the Chairman and I seem to have a little difference——

Senator **Laxalt**. July 25, I have.

Senator **Metzenbaum**. July 23 or July 25—whatever. At that moment, when that article was published, am I not correct in saying that not one dollar of interest had actually been paid to you?

Mr. **McKean**. That is correct.

Senator **Metzenbaum**. That is correct?

Mr. **McKean**. Yes, sir.

Senator **Metzenbaum**. And then, about a month later, the first payment of interest was made of $100; right?

Mr. **McKean**. About a month later, yes.

Senator **Metzenbaum**. I have nothing further of Mr. McKean.

Senator **Laxalt**. Now, that $100 is hanging out there, and it keeps hanging out there from time to time.

Senator **Metzenbaum**. I know why he paid the $100, Paul.

Senator **Laxalt**. What was the reason for the $100 payment—it was to round it off, wasn't it?

Mr. **McKean**. Yes, it was a rounding off of the $80,000——

Senator **Laxalt**. It was a rounding off, so you ended up with the flat $80,000.

Mr. **McKean**. Yes.

Senator **Laxalt**. All right.

[The following was received for the record.]

JOHN R. McKEAN C.P.A.
SIMON S. TENG C.P.A.

JOHN R. McKEAN, ACCOUNTANTS
A PROFESSIONAL CORPORATION
ONE CALIFORNIA STREET, SUITE 1200
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE 788-2400

CLIFFORD KUPPERBERG C.P.A.
TERENCE J. CALLAGHAN C.P.A.

Rec'd
4pm
5/11/84

May 9, 1984

The Honorable Strom Thurmond
Chairman
Senate Committee on the Judiciary
Room 226
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed is a copy of the transcript of my testimony before the Judiciary Committee on March 6, 1984, in the course of hearings on the nomination of Edwin Meese to be Attorney General of the United States. Corrections in the transcription of my testimony have been marked on the transcript itself.

In addition, for the sake of clarity and a complete record, I would like to supplement my testimony on two points.

First, in the course of my testimony, Senator Metzenbaum inquired about a questionnaire which I completed for the Senate Committee on Government Affairs at the time that my nomination to the Postal Service Board of Governors was referred to that Committee. Senator Metzenbaum asked why I had not specifically described my business relationships with Mr. Meese and Mr. Deaver in response to the following questions on the questionnaire:

> Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.
>
> * * * * * * *
>
> Describe any business relationship, dealing, or financial transaction which you have had during the last two years, whether for yourself, on behalf of a client, or acting as an agent that could in any way constitute or result in possible conflict of interest in the position for which you have been nominated.

As was noted at the hearing, in response to the first question, I informed the Committee on Government Affairs that I render service through an accounting firm and that I intended to continue to do so if confirmed by the Senate as a member of the Board of Governors. It was and is my understanding that I was not expected to sever my relationship with this firm, which is my main source of income, in order to accept a part-time government position. In addition, it was my understanding that the questionnaire did not seek a list of clients of the firm. Indeed, my response to the question clearly indicated that I would continue to serve clients. Had the Committee desired a fuller disclosure of the identity of those clients, I would have expected a follow-up inquiry, either prior to or during the hearing on my nomination. There was no such further inquiry.

With respect to the second question noted by Senator Metzenbaum, relating to potential conflicts of interest, I did not then nor do I now perceive any possible conflict of interest between my business relationships with Mr. Meese and Mr. Deaver and my service on the Board of Governors. I understand that Senator Metzenbaum disagrees with me on this point, but I can only state that I answered this question in good faith and continue to believe that my response was accurate. Furthermore, in response to another question, I wrote that I believed Mr. Meese and Mr. Deaver had recommended me for the position to which I had been nominated. In making that response, I intended to inform the Committee that I had a relationship with Mr. Meese and Mr. Deaver so that the Committee members could question me about that subject if they so chose.

Second, during my testimony, at pages 73 to 74 and 77 to 78 of the transcript, Senator Mathias asked certain questions concerning the way my firm billed Mr. Meese. The Committee should understand that my responses to those questions were intended to indicate that our billing practices with respect to Mr. Meese were the same as they would be with any new client that we were serving with a view toward developing a continuing client relationship. The firm billed Mr. Meese and has been paid by him for its preparation of his 1981 and 1982 tax returns. With respect to its work in arranging the loans, the firm has not billed Mr. Meese. The $60,000 loan which this firm arranged benefited not only Mr. Meese, but also the father of one of the partners in my firm. Mr. Meese paid more than $23,000 in interest. In these circumstances, the firm has not considered it appropriate to bill Mr. Meese for its efforts in arranging this transaction.

I would appreciate it if my testimony could be supplemented with these additional comments. I would also like to take this opportunity to express my thanks for the courtesy shown to me in the course of the hearing by you and your staff. Please advise me if I can be of further assistance to the Committee.

Very truly yours,

John R McKean

John R. McKean

JMcK:ab

John R. McKean, Accountants
A Professional Corporation

Senator **Metzenbaum**. Now, I have no further questions, and if no one else has questions, I would like to come back to the Fielding matter.

Senator **Laxalt**. Surely. I think that is all we have. We thank you very much.

Mr. **McKean**. Thank you, gentlemen.

Senator **Laxalt**. Before we proceed with the Fielding matter, I would like to place in the record, if my colleagues have no objection—and I understand that copies have been provided to counsel—a letter from Mr. Richard Houser, Deputy Counsel to the President, to Mr. Short, to clarify the submission of the deed of trust evidencing the sale of the Meese residence in San Diego to Irvin Howard.

Senator **Metzenbaum**. I have no objection.

Senator **Laxalt**. All right.

[The following was received for the record.]

THE WHITE HOUSE
WASHINGTON

March 5, 1984

Dear Mr. Short:

Pursuant to our telephone conversation earlier today, this is to clear up any possible confusion surrounding the submission of the Deed of Trust evidencing the sale of Mr. Meese's San Diego residence to I. E. and Lucy-Ann Howard, recorded September 1, 1982.

In order to respond to the Committee's request for documents, as formally set forth in the Chairman's letter of February 24, 1984, the Office of Counsel to the President contacted Darwin Olsen, Vice President and Counsel, Great American Federal Savings Bank, to verify Edwin Meese's loan transactions regarding his La Mesa, California and McLean, Virginia residences. This information was also needed in order to prepare a chronology of Mr. Meese's financial transactions as requested by the Committee.

Mr. Olsen confirmed the dates and amounts of each transaction. In addition, he agreed to furnish copies of those documents which were a matter of public record; namely:

1. Note and First Deed of Trust: $104,000 @ 8½% for 30 years payable to San Diego Federal Savings & Loan, recorded April 25, 1975.
2. Installment note and Second Deed of Trust on San Diego residence -- $16,000 @ 11½% for 30 years payable to San Diego Federal Savings & Loan, recorded July 16, 1975.
3. First Mortgage on McLean residence: $150,000 @ 13% for 27 years (9-3 year terms) payable initially to Washington & Lee Savings & Loan Association, recorded February 12, 1981, together with letter dated March 31, 1981 from David Huddleston, Assistant Vice President of Washington-Lee Savings and Loan Association.
4. Third Deed of Trust on San Diego residence: $132,000 @ 15%, recorded February 20, 1981.
5. Modification Agreement dated April 28, 1982 relating to Third Deed of Trust.

6. Straight Secured note and Fourth Deed of Trust on San Diego residence -- $21,000 @ 15% on demand to August 16, 1982, recorded May 6, 1982.

7. Deed of Trust dated August 25, 1982, showing trustor(s) as I.E. Howard and Lucy-Ann Howard, recorded September 1, 1982.

These documents were received on February 27, 1984. They were added to the documents to be provided by Mr. Meese, assembled, and forwarded to the Committee on February 28, 1984. To the best of my knowledge and belief, Mr. Meese did not see the Deed of Trust to I.E. and Lucy-Ann Howard, nor did he have an opportunity to review the final package of documents prior to its transmittal to the Committee. The document in question was included in order to be fully forthcoming and responsive to the Committee's request.

On the evening of February 29, 1984, Mr. Meese was provided a copy of the documents package which had earlier been forwarded to the Committee. At that time, he was advised as to the general contents of the package but was not briefed as to specific documents. The review consisted of showing him the notebook containing all the documents and showing him where each index in the package was located.

There were other documents requested and supplied in response to the Chairman's request which Mr. Meese did not have in his possession when the request was received. Specifically, copies of his income tax returns for calendar years 1975, 1976 and 1981 had to be requested, were provided by his accountants, and were included in the documents submitted.

Applying hindsight, it would have been advisable to segregate the documents by source for purposes of clarity. I have enclosed copies of those documents which were provided the Counsel's Office by Great American Federal Savings Bank.

Sincerely,

Richard A Hauser

Richard A. Hauser
Deputy Counsel to the
President

Mr. Duke Short
Chief Investigator
Senate Committee on the Judiciary
Washington, D.C. 20510

B75-033

Loan No. 2-67377-3

NOTE

US $ 104,000.00 SAN DIEGO, California
City
APRIL 16, 1975

FOR VALUE RECEIVED, the undersigned promise to pay San Diego Federal Savings and Loan Association, a corporation, or order, the principal sum of ONE HUNDRED FOUR THOUSAND AND NO/100 Dollars, with interest on the unpaid principal balance from the date of this Note, until paid, at the rate of 8.500 percent per annum. The principal and interest shall be payable at the payee's office in the City of San Diego, State of California, or such other place as the holder hereof may designate in writing, in consecutive monthly installments of SEVEN HUNDRED NINETY NINE AND 76/10 Dollars (US $ 799.76), on the 1ST day of each month beginning JUNE 1, 1975, until the entire indebtedness evidenced hereby is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable on the 1ST day of MAY, 2005

If any monthly installment under this Note is not paid when due and remains unpaid after a date specified by a notice sent by certified mail to the undersigned at the address stated below, which date shall be not less than thirty days from the date such notice is mailed, the entire principal amount outstanding hereunder and accrued interest thereon shall at once become due and payable at the option of the holder hereof. Failure to exercise such option shall not constitute a waiver of the right to exercise such option if the undersigned is in default hereunder. In the event of any default in the payment of this Note and if suit is brought hereon, the holder hereof shall be entitled to collect in such proceeding all reasonable costs and expenses of suit, including, but not limited to, reasonable attorney's fees.

The undersigned shall pay to the holder hereof a late charge of 4 percent of any monthly installment not received by the holder hereof within 15 days after the installment is due.

The undersigned shall have the right to prepay the principal amount outstanding in whole or in part, provided that the holder hereof may require that any partial prepayments shall be made on the date monthly installments are due and shall be in the amount of that part of one or more installments which would be applicable to principal. Any partial prepayment shall be applied against the principal amount outstanding and shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments, unless the holder hereof shall otherwise agree in writing. If, within five years from the date of this Note, the undersigned makes any prepayments in any twelve month period beginning with the date of this Note or anniversary dates thereof ("loan year") with money lent to the undersigned by a lender other than the holder hereof, the undersigned shall pay the holder hereof (a) during each of the first three loan years 4.250 percent of the amount by which the sum of prepayments made in any such loan year exceeds 20 percent of the original principal amount of this Note and (b) during the fourth and fifth loan years 3 percent of the amount by which the sum of prepayments made in any such loan year exceeds 20 percent of the original principal amount of this Note.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, personal representatives, successors and assigns.

The indebtedness evidenced by this Note is secured by a Deed of Trust, dated of even date herewith, and reference is made thereto for rights as to acceleration of the indebtedness evidenced by the Note, including paragraph 17 which provides as follows:

PAID IN F
ISSUED

> "Transfer of the Property; Assumption. If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Lender and that the interest payable on the sums secured by this Deed of Trust shall be at such rate as Lender shall request. If Lender has waived the option to accelerate provided in this paragraph 17 and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Deed of Trust and the Note. If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 14 of this Deed of Trust. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 18 of this Deed of Trust."

Edwin Meese III
EDWIN MEESE, III

Ursula Meese
URSULA MEESE

10911 SUNRAY PLACE
LA MESA, CA. 92041
Property Address

CALIFORNIA—FNMA/FHLMC—10/71—1 to 4 Family
C-3373 (Rev. 10/73)

(Execute Original Only)

ATTACHMENT (1)

Loan No. 71-67077-8

759

WHEN RECORDED MAIL TO
San Diego Federal Savings and Loan Assn.
P. O. BOX 2592
SAN DIEGO, CA 92112

75-091408
FILE/PAGE NO.
BOOK 1975
RECORDED REQUEST OF
FIRST AMERICAN TITLE CO.
APR 21 1975
8:00 A.M.
OFFICIAL RECORDS
SAN DIEGO COUNTY, CALIF.
HARLEY F. BLOOM, RECORDER

SPACE ABOVE THIS LINE FOR RECORDER'S USE $7.00

DEED OF TRUST

THIS DEED OF TRUST is made this 16TH day of APRIL, 19 75, among the Trustor, EDWIN MEESE, III AND URSULA MEESE HUSBAND AND WIFE (herein "Borrower"), CALIFORNIA GENERAL MORTGAGE SERVICE, INC., a corporation (herein "Trustee"), and the Beneficiary, SAN DIEGO FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation organized and existing under the laws of the United States of America whose address is San Diego, California (herein "Lender").

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of SAN DIEGO, State of California:

LOT 31 OF AVOCADO ESTATES UNIT NO. 2, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 5343, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 3, 1962, AS MORE PARTICULARLY SET FORTH IN EXHIBIT "A", CONSISTING OF ONE PAGE, ATTACHED HERETO AND MADE A PART HEREOF AS THOUGH CONTAINED HEREIN.

PAID IN FULL - RECONVEYANCE ISSUED

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate in the event this Deed of Trust is on a leasehold) are herein referred to as the "Property";

TO SECURE to Lender (a) the repayment of the indebtedness evidenced by Borrower's note of even date herewith (herein "Note"), in the principal sum of 104,000.00 Dollars, with interest thereon, providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on MAY 1, 2005; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained; and (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to paragraph 21 hereof (herein "Future Advances").

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, prepayment and late charges as provided in the Note, and the principal of and interest on any Future Advances secured by this Deed of Trust.

2. **Funds for Taxes and Insurance.** Subject to Lender's option under paragraphs 4 and 5 hereof, Borrower shall pay to Lender on the day monthly installments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments which may attain priority over this Deed of Trust, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. The Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender shall make no charge for so holding and applying the Funds or verifying and compiling said assessments and bills. Borrower and Lender may agree in writing at the time of execution of this Deed of Trust that interest on the Funds shall be paid to Borrower, and unless such agreement is made, Lender shall not be required to pay Borrower any interest on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Deed of Trust.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within thirty days after notice from Lender to Borrower requesting payment thereof.

Upon payment in full of all sums secured by this Deed of Trust, Lender shall promptly refund to Borrower any Funds held by Lender.

If under paragraph 18 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note and on Future Advances, if any, and then to the principal of the Note and to the principal of Future Advances, if any.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and ground rents, if any, at Lender's option in the manner provided under paragraph 2 hereof or by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Deed of Trust; provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require; provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Deed of Trust.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid at Lender's option in the manner provided under paragraph 2 hereof or by Borrower making payment, when due, directly to the insurance carrier.

All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender, and Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower or if Borrower fails to respond to Lender within 30 days after notice by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments.

If under paragraph 18 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof (to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition) resulting from damage to the Property prior to the sale or acquisition shall pass to Lender.

6. **Preservation and Maintenance of Property; Leaseholds; Condominiums.** Borrower shall keep the Property in good repair and shall not permit or commit waste, impairment, or deterioration of the Property and shall comply with the provisions of any lease, if this Deed of Trust is on a leasehold. If this Deed of Trust is on a condominium unit, Borrower shall perform all of Borrower's obligations under the declaration of condominium or master deed, the by-laws and regulations of the condominium project and constituent documents.

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible by applicable law. Nothing contained in this paragraph 7 shall require Lender to incur any expense or do any act hereunder.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Deed of Trust such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

If the Property is abandoned by Borrower or if after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days of the date of such notice, Lender is authorized to collect and apply the proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments.

10. Borrower Not Released. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest.

11. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

12. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

13. Successors and Assigns Bound; Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

14. Notice. Any notice to Borrower provided for in this Deed of Trust shall be given by mailing such notice by certified mail addressed to Borrower at the Property Address stated below, except for any notice required under paragraph 18 hereof to be given to Borrower in the manner prescribed by applicable law. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower when given in the manner designated herein.

15. Uniform Deed of Trust; Governing Law; Severability. This form of deed of trust combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property. This Deed of Trust shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflicts shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the Note are declared to be severable.

16. Borrower's Copy. Borrower shall be furnished a conformed copy of this Deed of Trust at the time of execution or after recordation hereof.

17. Transfer of the Property; Assumption. If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Lender and that the interest payable on the sums secured by this Deed of Trust shall be at such rate as Lender shall request. If Lender has waived the option to accelerate provided in this paragraph 17 and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Deed of Trust and the Note.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 14 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 18 hereof.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

18. Acceleration; Remedies. Except as provided in paragraph 17 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 14 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold and shall cause such notice to be recorded in each county in which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

19. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust, the Note and notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided in paragraph 18 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. Assignment of Rents; Appointment of Receiver; Lender in Possession. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 18 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 18 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

21. Future Advances. Upon request of Borrower, Lender, at Lender's option prior to full reconveyance of the Property by Trustee to Borrower, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.

22. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

23. Substitute Trustee. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

24. Request for Notices. Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property Address stated below.

25. Statement of Obligation. Lender may collect a fee not to exceed $15 for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

Edwin Meese III
EDWIN MEESE, III —Borrower

Ursula Meese
URSULA MEESE —Borrower

10911 SUNRAY PLACE
LA MESA, CA 92041
Property Address

OFFICIAL SEAL
EVONNE D. SHOWLEY
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires September 29, 1978

STATE OF CALIFORNIA, SAN DIEGO County ss:

On April 18, 1975, before me, the undersigned, a Notary Public in and for said State, personally appeared EDWIN MEESE, III RRX[redacted] known to me to be the person(s) whose name ~~XXXX~~ is subscribed to the within instrument, and acknowledged that ~~RIEX~~ he executed the same. WITNESS my hand and official seal.

(SEAL)

Evonne D. Showley
Notary Public in and for said State

TO 447 C
(Individual)

STATE OF CALIFORNIA
COUNTY OF San Diego } SS.

On April 17, 1975 before me, the undersigned, a Notary Public in and for said State, personally appeared Ursula Meese

known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.

Signature Evonne D. Showley

Name (Typed or Printed)

STAPLE HERE

Ⓣ

OFFICIAL SEAL
EVONNE D. SHOWLEY
NOTARY PUBLIC CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires September 29, 1978

(This area for official notarial seal)

notes, together
by directed to
out warranty,
to.

EXHIBIT "A" consisting of one page attached to and made a part of Deed of Trust under San Diego Federal Loan No. 71-67077-8.

LEGAL DESCRIPTION
ORDER NO. 713522-2

PARCEL 1:

Lot 31 of AVOCADO ESTATES UNIT NO. 2, in the County of San Diego, State of California, according to Map thereof No. 5043, filed in the Office of the County Recorder of San Diego County, October 3, 1962.

Together with that portion of the Northerly one-half of an existing 60.00 foot easement for road as shown and designated on Record of Survey Map No. 3249, filed in the Office of the County Recorder, San Diego County, December 11, 1953, which lies between the Southerly prolongations of the Easterly and Westerly line of Lot 31 of said Avocado Estates Unit No. 2.

Together with all that portion of Lot 30 of AVOCADO ESTATES UNIT NO. 2, according to Map thereof No. 5043, filed in the Office of the County Recorder of San Diego County, October 3, 1962, Excepting therefrom that portion described as follows:

Beginning at the Southwest corner of said Lot 30; thence South 89°41'50" East along the Southerly line of Lot 30, 127.69 feet to the true point of beginning; thence North 0°18'10" East 3 feet; thence South 89°41'50" East, 31.2 feet, to a point of tangency with a 41 foot radius curve concave Northwesterly; thence Northeasterly along the arc of said curve 51.32 feet through a central angle of 71°43'10"; thence South 71°25'00" 3 feet to the East line of said lot 30; thence along the East line of Lot 30, South 18°35' West, 31.8 feet to the Southeasterly corner of said Lot 30; thence along the South line of said Lot 30, North 89°41'50" West, 63.0 feet to the true point of beginning.

PARCEL 2:

The East 173.00 feet of the South 200.00 feet of the Northwest Quarter of the Northwest Quarter of Section 26, Township 16 South, Range 1 West, San Bernardino Base and Meridian, in the County of San Diego, State of California, according to United States Government Survey, approved May 3, 1859.

PARCEL 3:

An easement and right of way for ingress and egress for road, water pipe line and other utilities purposes over the Northerly 30.00 feet of the Southerly 200.00 feet of the Northwest Quarter of the Northwest Quarter of Section 26, Township 16 South, Range 1 West, San Bernardino Base and Meridian, in the County of San Diego, State of California, according to United States Government Survey approved May 3, 1859.

EXCEPTING THEREFROM that portion lying West of the center line of Avocado Boulevard, as shown on Map of Mt. Helix Calavo Gardens, Unit No. 4, according to Map thereof No. 2130.

ALSO EXCEPTING THEREFROM that portion lying within Parcel 2 above.

Edwin Meese III
Edwin Meese III

Ursula Meese
Ursula Meese

Washington-Lee
SAVINGS AND LOAN ASSOCIATION

FSLIC

RICHARD S. LAWTON
CHAIRMAN OF THE BOARD & PRESIDENT
WILLIAM B. SWIFT
EXECUTIVE VICE PRESIDENT

Main Office 8200 GREENSBORO DRIVE, P.O. BOX 1087, McLEAN, VIRGINIA 22101 • (703) 442-7030

MARCH 31, 1981

PIONEER NATIONAL TITLE INSURANCE CO.
4084 UNIVERSITY DRIVE
FAIRFAX, VIRGINIA 22030
ATTN: KEITH CRUTTENDEN
RE: POLICY NO. I.D. 001534
COMMITMENT NO. 48-1000-1193-L/O

DEAR MR. CRUTTENDEN:

AS MORTGAGEE, WASHINGTON-LEE SAVINGS AND LOAN ASSOCIATION HAS TRANSFERRED THE LOAN FOR EDWIN MEESE, III TO SAN DIEGO FEDERAL SAVINGS AND LOAN ASSOCIATION. THE PROPERTY IS DESCRIBED AS: LOT 44 SECTION ONE CEDARS OF MC LEAN, BOOK 4573 PAGE 9388.

THE TITLE POLICY SHOULD BE ENDORSED TO SHOW SAN DIEGO FEDERAL SAVINGS AND LOAN ASSOCIATION AS THE NEW MORTGAGEE. CORRESPONDENCE WITH THEM SHOULD BE DIRECTED TO 600 B. STREET SAN DIEGO, CALIFORNIA 92183, ATTN. JIM SCHMITT.

IF THERE ARE ANY QUESTIONS PLEASE CALL THE UNDERSIGNED. THANK YOU FOR YOUR TIME AND CO-OPERATION IN THIS MATTER.

SINCERELY,

David Huddleston
DAVID HUDDLESTON,
ASST. VICE PRESIDENT
SECONDARY MARKETING DEPT.

RENEGOTIABLE RATE NOTE

U.S. $ 150,000.00

Fairfax County, Virginia

February 11, 1981

FOR VALUE RECEIVED, the undersigned ("Borrower") promise(s) to pay WASHINGTON-LEE SAVINGS AND LOAN ASSOCIATION, or order, the principal sum of One Hundred Fifty Thousand and no/100ths Dollars ($ 150,000.00), with interest** on the unpaid principal balance from the date of this note, until paid, at the rate of Thirteen (13.00) percent per annum ("Original Interest Rate"). Principal and interest shall be payable at 8150 LEESBURG PIKE, McLEAN, VIRGINIA 22101, or such other place as the noteholder may designate, in consecutive monthly installments initially of One Thousand Six Hundred Fifty Nine and 30/100 Dollars (U.S. $ 1,659.30), on the First day of each month beginning April 1, 19 81 ("Amortization Commencement Date"). Such monthly installments shall continue until the entire indebtedness evidenced by this note is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable on April 1, 1984 ("Initial Loan Term"). This loan may be renewed for Nine (9) Renewal Loan Terms.

[Prior to the commencement of amortization, the undersigned shall pay the holder hereof interest only on the outstanding principal balance of this note at the rate of N/A percent per annum in consecutive monthly installments beginning N/A, 19 ____, and on the N/A day of each month thereafter until the amortization commencement date, at which time any remaining interest payable pursuant to this paragraph (and not paid as a part of the first monthly installment of principal and interest) shall pe paid.]***

In addition to the terms defined elsewhere in this note, the following terms, when used herein, shall have the meanings indicated:

INITIAL LOAN TERM – That period of time from and including the day this note was signed to and including the day Three (3) calendar years from the day this note was signed.

EXTENDED PERIOD OF INITIAL LOAN TERM – That period of time no longer than six (6) calendar months which preceed the day on which the Original Index Rate is determined thereby making the Initial Loan Term mature with other similar loans on the same day Three (3) calendar years from the end of such extended period. If an Initial Loan Term has an extended period as herein defined, the Initial Loan Term means that period of time from and including the day this note was signed to and including the day Three (3) calendar years from the day this note was signed plus the length of any extended period.

RENEWAL INTERVAL – That period of time equal to the length of the Initial Loan Term less any Extended Period of the Initial Loan Term.

LOAN TERM – A period of time of either three, four or five years determined by reference to the Initial Loan Term.

RENEWAL LOAN TERM – That period of time beginning on the first day next following the end of the Initial Loan Term and ending Three (3) calendar years later. For purposes of renewals, subsequent to the first renewal of the loan evidenced by this note, renewal loan term means that period of time beginning on the first day next following the end of the immediately preceeding loan term and ending Three (3) calendar years later. If this loan has an Extended Period of the Initial Loan Term, then as to the final renewal term, Renewal Loan Term means that period of time beginning on the first day next following the end of the immediately preceeding loan term and ending on the Final Maturity Date; and further provided, however, that if the length of the loan (i.e., that time period from date of note to the Final Maturity Date) is not evenly divisible by the Loan Term, then the last Renewal Loan Term shall be accordingly reduced so that the last Renewal Loan Term shall not exceed the Final Maturity Date.

RENEGOTIABLE – For the purposes of this note and the deed of trust securing the same, the term "renegotiable" in the title Renegotiable Rate Note or "Renegotiable Rate Deed of Trust" means that the interest rate, only, is subject to adjustment by modification agreement pursuant to the State Corporation Commission Regulations under which Renegotiable Rate Mortgages are authorized.

NOTICE PERIOD FOR RENEWAL – That period of time at least ninety (90) days before the last day of the Initial Loan Term or Renewal Loan Term except for the final renewal term.

RENEWAL NOTICE – Written notice according to the form prescribed by State Corporation Commission Regulation to be sent by the Association to the Borrower(s) at least ninety (90) days before the last day of the Initial Loan Term or Renewal Loan Terms except for the final renewal loan term.

INDEX – The Monthly National Average Mortgage Rate Index for All Major Lenders. This index reflects the contract interest rate on the purchase of previously occupied homes as computed by the Federal Home Loan Bank Board and published monthly in the Federal Home Loan Bank Board Journal (Table S. 5.1).

ORIGINAL INDEX RATE – The index rate as determined on the first day of the Initial Loan Term. If the Initial Loan Term has an extended period, the Original Index Rate means the index rate as determined on the first day next following the end of the extended period. In any case, the Original Index Rate must be the index rate as reflected in the most recent Index made available by the Federal Home Loan Bank Board whether or not the most recent Index has been officially published in the Federal Home Loan Bank Board Journal.

ORIGINAL INTEREST RATE – The interest rate in effect during the Initial Loan Term.

RENEWAL INDEX RATE – The index rate as determined at the time the Renewal Notice is sent to the Borrower(s) for the next Renewal Loan Term. The Renewal Index Rate must be the index rate as reflected in the most recent Index made available by the Federal Home Loan Bank Board whether or not the most recent Index has been officially published in the Federal Home Loan Bank Board Journal.

RENEWAL INTEREST RATE – The interest rate in effect during a Renewal Loan Term.

FINAL MATURITY DATE – That day on which the loan evidenced by this Note is finally due if regularly renewed at the end of each Renewal Interval as provided herein. The Final Maturity Date of this Note is March 1, 2011

The interest rate on this note shall be adjusted upward or downward upon renewal hereof from time to time in relation to the change in the Index. Decreases and increases in interest rate from the previous loan term are mandatory. The Renewal Interest Rate for a Renewal Loan Term shall be calculated in the following manner:

1. Determine the difference between the Renewal Index Rate and the Original Index Rate.
2. Add the difference determined in subsection (1) to the Original Interest Rate if the Renewal Index Rate is equal to or greater than the Original Index Rate or subtract the difference determined in subsection (1) from the Original Interest Rate if the Renewal Index Rate is equal to or less than the Original Index Rate.
3. The number found in subsection (2) is the Renewal Interest Rate for the next Renewal Loan Term, if the difference between that number and the interest rate for the current loan term does not exceed the interest rate limitation in subsection (4).

4. If the difference between the number found in subsection (2) and the interest rate for the current loan term does exceed the interest rate limitations stated hereafter, then the Renewal Interest Rate for the next Renewal Loan Term is the interest rate for the current loan term plus (if an increase) or minus (if a decrease) the maximum increase or decrease permitted hereafter.
   (a) The maximum interest rate increase or decrease is one-half of one percent (0.5%) per year multiplied by the number of years in the Loan Term.
   (b) At no time during the term of this note may the maximum interest rate increase be in excess of five percent (5%) over the Original Interest Rate and at no time during the term of this note may the maximum interest rate decrease be in excess of five percent (5%) under the Original Interest Rate.

The loan evidenced by this note shall, after the Initial Loan Term, be automatically renewed at the option of the Borrower at equal renewal intervals until the Final Maturity Date of this note; provided that at the time of each renewal, Borrower shall execute and deliver to Lender a Renewal Modification Agreement which shall be in recordable form and which shall set out the Renewal Interest Rate and the new monthly installment of principal and interest, and further provided that the Borrower may not be charged any cost or fees in connection with a renewal of this loan.

Each Renewal Loan Term shall be for the same length of time as the Initial Loan Term less any Extended Period of Initial Loan Term. If the Initial Loan Term has an Extended Period of Initial Loan Term, then the final Renewal Loan Term shall be reduced by the length of the Extended Period of Initial Loan Term.

This note must be repaid in consecutive equal monthly installments of principal and interest for the Initial Loan Term and each Renewal Loan Term in an amount at least sufficient to amortize a loan with the same principal at the same interest rate over the remaining term of the deed of trust.

When the Initial Loan Term or any Renewal Loan Term is renewed, the only provision of this note or the deed of trust securing the same that may be changed is the contract interest rate including any necessary change in the amount of the monthly installment of principal and interest.

Lender will give Borrower at least ninety (90) days prior to the last day of the Initial Loan Term and each Renewal Loan Term except for the last Renewal Loan Term the Renewal Notice required by the State Corporation Commission Regulation and which notice shall be in the form prescribed by that section.

If any monthly installment under this note is not paid when due and remains unpaid after a date specified by a notice to Borrower, the entire principal amount outstanding and accrued interest thereon shall at once become due and payable at the option of the noteholder. The date specified shall not be less than thirty (30) days from the date such notice is mailed. The noteholder may exercise its option to accelerate during any default by Borrower regardless of any prior forbearance. If suit is brought to collect this note, the noteholder shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, reasonable attorney's fees.

Borrower shall pay to the noteholder a late charge of (4) FOUR percent of any monthly installment not received by the noteholder within (15) FIFTEEN days after the installment is due.

Borrower may prepay the principal amount outstanding in whole or in part at any time without penalty. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent monthly installment or (except at the time of a renewal as provided in this note) change the amount of such installment unless the noteholder shall otherwise agree in writing.

Presentment, notice of dishonor and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof. This note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers and shall be binding upon them and their successors and assigns.

Any notice to Borrower provided for in this note shall be given by mailing such notice by certified mail addressed to Borrower at the property address stated below, or to such other address as Borrower may designate by notice to the noteholder. Any notice to the noteholder shall be given by mailing such notice by certified mail, return receipt requested, to the noteholder at the address stated in the first paragraph of this note or at such other address as may have been designated by notice to Borrower.

The indebtedness evidenced by this note is secured by a deed of trust dated February 6, 19 81, and reference is made to the deed of trust for rights as to acceleration of the indebtedness evidenced by this note.

***In addition to the interest payable as stated above, an investigating and processing fee totaling U.S. $ 1,500.00 was, or is to be, paid by the undersigned in connection with this indebtedness.*

****This paragraph inapplicable if this loan is a permanent loan only.*

Edwin Meese III (SEAL)
EDWIN MEESE, III

1075 Spring Hill Road
McLean, Virginia 22102
(PROPERTY ADDRESS)

(SEAL)

(SEAL)

This is to certify that this is the note described in and secured by a deed of trust dated February 6, 19 81 on property located in Fairfax County, Virginia.

Lot 44, Section 1, CEDARS OF MC LEAN

My commission expires: May 15, 1984

J. Curtis Herge
(Notary Public)

Pay to the order of
San Diego Federal Savings and Loan Association
without Recourse
Washington-Lee Savings and Loan Association

William B. Swift
William B. Swift, Exec. Vice President

RENEWABLE LOAN NOTE (9-80)

81-000389 ...EGOTIABLE RATE DEED OF TRU... BK5525 [illegible]

NOTICE: THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

Return to: Sedam & Herge

THIS DEED OF TRUST is made this 6th day of February, 19 81, among the Grantor Edwin Meese, III and Ursula Meese,* his wife (herein "Borrower"), FIRST FINANCIAL SERVICE COMPANY, INC. of FAIRFAX COUNTY, Virginia, and ________ of ________, Virginia, Trustees (any one of whom may act and who are referred to herein as "Trustees"), and the Beneficiary, WASHINGTON-LEE SAVINGS AND LOAN ASSOCIATION, a corporation organized and existing under the laws of VIRGINIA, whose address is 8150 LEESBURG PIKE, McLEAN, VIRGINIA 22101, (herein "Lender").

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of Fairfax, State of Virginia:

Lot FORTY-FOUR (44), Section ONE (1), CEDARS OF McLEAN, as the same appears duly dedicated, platted and recorded in Deed Book 4573 at Page 409, among the land records of Fairfax County, Virginia.

AND BEING the same property conveyed to the parties of the first part by Deed recorded immediately prior hereto.

Tax Map Reference Number: 020-4-11-0044 (Fairfax County, Virginia)

*URSULA MEESE has entered into the execution of this Deed of Trust for the limited purpose of subordinating her inchoate dower interest to the lien of this Deed of Trust. She is signing as party without personal obligation for the sums secured hereby.

This is a Purchase Money Deed of Trust and has the same force and effect as a Vendor's lien.

which has the address of 1075 Spring Hill Road (street), McLean (city), Virginia 22102 (zip code) (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are herein referred to as the "Property";

TO SECURE to Lender (a) the repayment of the indebtedness evidenced by Borrower's Renegotiable Rate Note dated February 11, 19 81 (herein "Note"), in the principal sum of One Hundred Fifty Thousand and 00/100ths Dollars ($ 150,000.00), with interest thereon, providing for equal monthly installments of principal and interest** for an Initial Loan Term of three (3) years, which Note is automatically renewable at the option of the Borrower for Nine (9) Renewal Loan Terms as provided in the Note, with the balance of the indebtedness, if not sooner paid, having a Final Maturity Date (as defined in the Note) of March 1, 2011, ~~19~~ _____; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained; (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to paragraph 21 hereof (herein "Future Advances"); (c) the performance of the covenants and agreements of Borrower contained in a Construction Loan Agreement between Lender and Borrower dated N/A, 19 _____, if any, as provided in paragraph 26 hereof; (d) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument; and (e) the performance of the covenants and agreements of Borrower herein. For the purpose of Section 8.01-241 of the Code of Virginia, 1950 (1977 Replacement Volume), the maturity date of the obligation secured hereby is the Final Maturity Date.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any declaration, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, for the Initial Loan Term and all Renewal Loan Terms, prepayment and late charges as provided in the Note, and the principal of and interest on any Future Advances secured by this Deed of Trust.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly installments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments which may attain priority over this Deed of Trust, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof.

The Funds shall be held in an institution, the deposits or accounts of which are insured or guaranteed by a Federal [illegible] agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Deed of Trust that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Deed of Trust.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amounts of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days from the date notice is mailed by Lender to Borrower requesting payment thereof.

Upon payment in full of all sums secured by this Deed of Trust, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 18 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, then to the principal of the Note, and then to interest and principal on any Future Advances.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Deed of Trust; provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require; provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Deed of Trust.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the insurance carrier.

All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. If under paragraph 18 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

6. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If a condominium or planned unit development rider is executed by Borrower and recorded together with this Deed of Trust, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Deed of Trust as if the rider were a part hereof.

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law. Borrower shall pay the amount of all mortgage insurance premiums in the manner provided under paragraph 2 hereof.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Deed of Trust such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower ot[illegible]se agree in writing, any such application of [illegible]ceeds to principal shall not extend or postpone the due date of the monthly [illegible]allments referred to in paragraphs 1 and 2 h[illegible]f or change the amount of such installments.

10. **Borrower Not Released.** Ex[illegible]on of time for payment or modification of [illegible]rtization of the sums secu[illegible] Deed of Trust granted by Lender to a[illegible] successor in interest of Borrower shall not oper[illegible] to release, in any manner, [illegible] of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings again[illegible] successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trus[illegible] reason of any demand made by the original Borrower and Borrower's successors in interest.

11. **Forbearance by Lender Not a Waiver.** Any forebearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

12. **Remedies Cumulative.** All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively

13. **Successor and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

14. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by mailing such notice by certified mail addressed to Borrower at the property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

15. **Uniform Deed of Trust; Governing Law; Severability.** This form of deed of trust combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property. This Deed of Trust shall be governed by the law of the jurisdiction in which the Property is located. In the Event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provision of the Deed of Trust and the note are declared to be severable.

16. **Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.

17. **Transfer of the Property; Assumption.** If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Lender and that the interest payable on the sums secured by this Deed of Trust shall be at such rate as Lender shall request. If Lender has waived the option to accelerate provided in this paragraph 17, and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shal release Borrower from all obligations under this Deed of Trust and the Note.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of Acceleration in accordance with paragraph 14 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 18 hereof.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

18. **Acceleration; Remedies.** – Except as provided in paragraph 17 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 14 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in this notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender or Trustee shall give to Borrower a copy of a notice of sale in the manner prescribed by applicable law. Trustee shall give public notice of sale by advertising, in accordance with applicable law, once a week for four successive weeks in a newspaper published or having general circulation in the county or city in which the Property or some portion thereof is located, and by such additional or different form of advertisement as the Trustee may deem advisable, if any. Trustee may sell the Property on the twenty-second day after the first advertisement or any day thereafter. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place of any previously scheduled sale or by advertising in accordance with applicable law. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold with special warranty of title. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, Trustee's fees of FIVE (5) percent of the gross sale price, reasonable attorney's fees and costs of title evidence; (b) to the discharge of all taxes, levies and assessments on the property, if any, as provided by applicable law; (c) to all sums secured by this Deed of Trust; and (d) the excess, if any, to the person or persons legally entitled thereto, including, if any, holders of liens inferior to this Deed of Trust in order of their priority, provided that Trustee has actual notice of such liens. Trustee shall not be required to take possession of the Property prior to the sale thereof or to deliver possession of the Property to the purchaser at such sale.

19. **Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to the earlier to occur of (i) the fifth day before sale of the Property pursuant to the power of sale contained in this Deed of Trust or (ii) entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust, the Note and notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee enforcing the covenants and agreements of Borrower contained in this Deed of Trust and in enforcing Lender's and Trustee's remedies as provided in paragraph 18 hereof, including, but not limited to, reasonable attorney's fees, and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. **Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 18 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 18 hereof or abandonment of the property, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property, including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

21. **Future Advances.** Upon request of Borrower, Lender, at Lender's option prior to release of this Deed of Trust, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Deed of Trust, not including sums advanced in accordance herewith to protect the security of this Deed of Trust, exceed the original amount of the Note plus U.S. $ NONE .

22. **Release.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to release this Deed of Trust and shall surrender all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall release this Deed of Trust without charge to Borrower. Borrower shall pay all costs of recordation, if any.

23. **Substitute Trustee.** Lender may from time to time in Lender's discretion remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

24. **Identification of Note.** The Note is identified by a certificate on the Note executed by any Notary Public who certifies an acknowledgement hereto.

25. **Notice to Lienholders.** The Note secured by this Deed of Trust provides for renewals at periodic intervals. At the time of any such renewals or otherwise, the interest rate set forth in the Note may be modified from time to time by the parties under a written agreement of modification which need not be recorded. All interest on the principal secured by this deed of trust shall be on an equal priority with the principal debt secured by this deed of trust.

26. **Construction Loan Provisions.** Borrower agrees to comply with the covenants and conditions of the Construction Loan Agreement, if any, which is hereby incorporated by reference in and made a part of this Instrument. All advances made by Lender pursuant to the Construction Loan Agreement shall be indebtedness of Borrower secured by this Instrument, and such advances may be obligatory as provided in the Construction Loan Agreement. All sums disbursed by Lender prior to completion of the improvements to protect the security of this Instrument up to the principal amount of the Note shall be treated as disbursements pursuant to the Construction Loan Agreement. All such sums shall bear interest from the date of disbursement at the rate stated in the Note, unless collection from Borrower of interest at such rate would be contrary to applicable law in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law and shall be payable upon notice from Lender to Borrower requesting payment therefor.

From time to time as Lender deems necessary to protect Lender's interest, Borrower shall, upon request of Lender, execute and deliver to Lender, in such form as Lender shall direct, assignments of any and all rights or claims which relate to the construction of the Property and which Borrower may have against any party supplying or who has supplied labor, materials or services in connection with construction of the Property. In case of breach by Borrower of the covenants and conditions of the Construction Loan Agreement, Lender, at Lender's option, with or without entry upon the Property, (i) may invoke any of the rights or remedies provided in paragraph 18 hereof, or (ii) may do both. If, after the commencement of amortization of the Note, the Note and this Instrument are sold by Lender, from and after such sale the Construction Loan Agreement shall cease to be a part of this Instrument and Borrower shall not assert any right of set-off, counterclaim or other claim of defense arising out of or in connection with the Construction Loan Agreement against the obligations of the Note and this Instrument.

IN WITNESS WHEREOF, Borrower has executed and sealed this Deed of Trust.

***In addition to the interest payable as stated above, and investigating and processing fee totaling U.S. $* 1,500.00 *was, or is to be, paid by the undersigned in connection with this indebtedness.*

*Ursula Meese has entered into the execution of this Deed of Trust for the limited purpose of of subordinating any inchoate dower interest to the lien of this Deed of Trust. She is signing as a party without personal obligation for the sums secured hereby.

Edwin Meese III (SEAL)
Borrower
EDWIN MEESE, III

Ursula Meese (SEAL)
Borrower
URSULA MEESE *

STATE OF VIRGINIA)
) ss:
CITY/COUNTY OF Fairfax)

The foregoing instrument was acknowledged before me this 6th day of February, 19 81.

by URSULA MEESE, Married
(person acknowledging)

My commission expires: May 15, 1984

Donna E. [illegible]
Notary Public

DISTRICT OF COLUMBIA,

The foregoing instrument was acknowledged before me this 11th day of February, 1981, by EDWIN MEESE, III, Married.

My Commission Expires:
April 14, 1983

Robert D. Linder
~~Notary Public~~

(Space Below This Line Reserved For Lender and Recorder)

RETURN TO: Sedam & Herge, P.C.
7600 Old Springhouse Road
McLean, Virginia 22102

150.00
225.00
75.00
10.00
310.00

RECORDED W/CERTIFICATE ANNEXED
1981 FEB 12 PM 12: 57
FAIRFAX COUNTY, VA.
TESTE: [illegible] CLERK

[illegible] 1305

RECORDING REQUESTED BY

Commercial Loan Department
C Cortez

WHEN RECORDED MAIL TO

SAN DIEGO FEDERAL
SAVINGS & LOAN ASSOCIATION
600 "B" STREET
SAN DIEGO, CA 92163
Attn:

ORDER NO. ________
LOAN NO. 0002

81-052481
FILE/PAGE NO.
BOOK 1981
RECORDED REQUEST OF
SAFECO TITLE INSURANCE COMPANY
FEB 20 10 46 AM '81
OFFICIAL RECORDS
SAN DIEGO COUNTY, CA.
VERA L. LYLE
RECORDER

$7.00

M.F.
$1.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST AND ASSIGNMENT OF RENTS

(THIS IS ☐ IS NOT ☒ A CONSTRUCTION DEED OF TRUST)

THIS DEED OF TRUST, made this 14th day of February, 19 81, between Edwin Meese, III and Ursula Meese, Husband and Wife

herein called TRUSTOR, whose address is 10911 Sunray Place La Mesa, Ca. 92041
(Number and Street, City, County and State)

CALIFORNIA GENERAL MORTGAGE SERVICE, INC., a corporation, of San Diego, California, herein called TRUSTEE AND SAN DIEGO FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation, of San Diego, California, herein called BENEFICIARY.

WITNESSETH: That Trustor irrevocably grants, transfers and assigns to Trustee, in trust, with power of sale, that real property in San Diego County, California, described as:

Lot 31 of Avocado Estates Unit No. 2, in the County of San Diego, State of California, according to Map thereof # 5043, filed in the Office of the County Recorder of San Diego County, October 3, 1962.
Together with that portion of the Northerly one-half of an existing 60.00 foot easement for road as shown and designated on Record of Survey Map No. 3249, filed in the Office of The County Recorder, San Diego County, December 11, 1953, which lies between the Southerly prolongations of the Easterly and Westerly line of Lot 31 of said Avocado Estates Unit No. 2.
Together with all that portion of Lot 30 of Avocado Estates Unit No. 2, according to Map thereof No. 5043, filed in the Office of the County Recorder of San Diego County, October 3, 1962, described as follows: Beginning at the Southwest corner of said Lot 30; as more particularly set out in the description attached hereto and made a part hereof, marked "Exhibit A" and comprised of the one page.

TOGETHER WITH (a) all buildings and improvements, fixtures and appurtenances now, or hereafter placed, thereon, it being understood and agreed that all classes of property attached or unattached, other than consumable goods, used in connection therewith shall be deemed fixtures, and (b) the rents, income, issues and profits of all property covered by this deed of trust, SUBJECT, HOWEVER, to the assignment incorporated herein, to Beneficiary, of such rents, income, issues and profits.

FOR THE PURPOSE OF SECURING:

1. Payment of the sum of $ 132,000.00 with interest thereon according to the terms of a promissory note or notes of even date herewith, made by Trustor, payable to Beneficiary or order, and all extensions or renewals thereof. 2. Performance of each agreement of Trustor contained herein. 3. Payment of such additional sums, with interest thereon (a) as may be hereafter borrowed from Beneficiary by the then record owner or owners of the above property when evidenced by another promissory note or notes, or (b) as may be added to the indebtedness secured hereby in accordance with the provisions of this Deed of Trust. 4. Payment, with interest thereon, of any other present or future indebtedness or obligation of the Trustor (or of any successor in interest of the Trustor to said property) to the Beneficiary, whether created directly or acquired by assignment, whether absolute or contingent, whether due or not, whether otherwise secured or not, or whether existing at the time of the execution of this Deed of Trust or arising thereafter. 5. Performance, if this is a construction loan, of each agreement of Trustor contained in the Building Loan Agreement and Assignment of Account between Trustor and Beneficiary. 6. Performance by Trustor, if the security hereunder is a leasehold interest, of each agreement of lessee contained in the lease creating such leasehold. 7. Compliance by Trustor, if the security hereunder is a condominium, community apartment or planned development, with each and every monetary provision or covenant to be performed by Trustor under the Declaration of Covenants, Conditions and Restrictions pertaining to the condominium project and, upon written request of Beneficiary, the enforcement by Trustor of the covenant against other owners in such project to pay maintenance charges, if the same have not been paid or valid legal steps taken to enforce such payment within 90 days after such written request is made. 8. Payment of the fees and charges of Beneficiary whether or not described herein.

ATTACHMENT (4)

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) To keep such property in good condition and repair, not to substantially alter, remove or demolish any buildings thereon, to restore promptly and in good workmanlike manner any buildings which may be damaged or destroyed including, without restricting the generality of the foregoing, damage from termites and dry rot, to pay when due all claims for labor performed and materials furnished in connection with such property and not to permit any mechanics' liens against such property; to comply with all laws affecting such property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereon; not to commit, suffer or permit any act upon such property in violation of law; and to cultivate, irrigate, fertilize, fumigate, prune, and to do all other acts that from the character or use of said property may be reasonably necessary. If the loan secured hereby, or any part thereof, is being obtained for the purpose of constructing improvements on such property, anything in this Deed of Trust to the contrary notwithstanding, Trustor further agrees (a) to complete the same in accordance with plans and specifications satisfactory to Beneficiary, and to comply with all the provisions of the building loan agreement entered into with Beneficiary, (b) to allow Beneficiary to inspect such property at all times during construction, (c) to replace any work or materials unsatisfactory to Beneficiary within fifteen (15) calendar days after written notice from Beneficiary of such fact, which notice may be given to Trustor by registered or certified mail, sent to his last known address, or by personal service of the same, and (d) that work shall not cease on the construction of such improvements for any reason whatsoever for a period of fifteen (15) calendar days, whether consecutive or not, without the written permission of Beneficiary, (e) to promptly pay all claims for labor performed and materials furnished in connection with the said construction and not to permit any claims of lien for said work or material to be filed of record against the said property. If the said property is part of a larger tract upon which improvements will be constructed, Trustor shall make separate contracts and sub-contracts for said construction which shall pertain to the said property only and shall keep separate, full and complete records of all work and materials furnished to the said property. Trustee, upon presentation to it of an affidavit signed by Beneficiary setting forth facts showing a default by Trustor under this paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

(2) To provide and maintain in force, at all times, fire and other types of insurance as may be required by Beneficiary, each in an amount satisfactory to and with loss payable to Beneficiary. The policies of such insurance shall be for a term and in form and content and in such companies as may be satisfactory to Beneficiary, and shall be delivered to, and remain in possession of, Beneficiary as further security for the faithful performance of these trusts. At least thirty (30) days prior to the expiration of any insurance policy, a policy or policies renewing or extending such expiring insurance shall be delivered to Beneficiary together with written evidence showing payment of the premium therefor and, in the event any such insurance policy and evidence of payment of the premium are not so delivered by Trustor to Beneficiary, Trustor by executing this Deed of Trust specifically requests Beneficiary to obtain such insurance. Beneficiary, but without obligation so to do, without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may obtain such insurance through or from any insurance agency or company acceptable to it, pay the premium therefor, and add the amount thereof to the indebtedness secured hereby which amount shall bear a like rate of interest. Beneficiary, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Beneficiary pursuant hereto, and any information concerning the loan secured hereby. Neither Trustee nor Beneficiary shall be responsible for such insurance or for the collection of any insurance moneys, or for any insolvency of any insurer or insurance underwriter. Any and all unexpired insurance shall inure to the benefit of, and pass to the purchaser of, the property conveyed at any Trustee's sale held hereunder. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or, at the option of Beneficiary, any part or all of such amount may, without reducing the indebtedness secured hereby, either be used to replace, restore, or reconstruct the property covered by this Deed of Trust to a condition satisfactory to Beneficiary, or be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) That, in the event Trustor shall maintain life, accident or health insurance and Beneficiary shall be the owner or holder of any policy or policies of such insurance as further security hereunder and Trustor shall default in payment of any premium thereof, Beneficiary may elect to pay any such premium, and any amount so paid may be added by Beneficiary to the indebtedness secured hereby and shall bear a like rate of interest.

(4) To pay, satisfy and discharge (a) at least ten (10) days before delinquency, all general and special City and County taxes, and all assessments on appurtenant water stock, affecting such property, (b) when due, all special assessments for public improvements, without permitting any improvement bond to issue for any special assessment, (c) all encumbrances, charges and liens, with interest, on said property, or any part thereof, which are, or appear to Beneficiary to be, prior to or superior hereto, (d) all costs, fees, charges and expenses of this trust, whether or not described herein, (e) for any statement showing the obligation secured hereby any amount demanded by Beneficiary not to exceed the maximum allowed by law therefor at the time when such request is made, (f) such other charges as the Beneficiary may

(9) Beneficiary shall have the right, at its option, to declare all sums secured hereby immediately due and payable within 30 days after such declaration, if Trustor or any successor in interest to Trustor (a) conveys, transfers or assigns the property or any part thereof, whether by deed, contract of sale, lease with option to buy, or otherwise; or (b) further encumbers or alienates the property or any part thereof; or (c) leases the property or any part thereof for a term, together with all exercisable options, of 5 years or more; or (d) suffers his title or any interest therein to be divested, whether voluntarily or involuntarily; or (e) changes or permits to be changed the character or use of the property, including, without limitations, drilling or extracting oil, gas, or other hydrocarbon substances, or any mineral of any kind or character; or (f) if suit be commenced to condemn the property as being unfit for human use and occupancy or to abate as a nuisance activities or conditions found thereon or for the partition or sale of said property; or (g) if Trustor is a partnership, any of the general partners' interests are transferred or assigned, whether voluntarily or involuntarily; or (h) if Trustor is a corporation and more than 25 per cent of the capital stock thereof is sold, transferred or assigned during a twelve-month period; or (i) has made any oral or written material misrepresentation or failed to disclose any material fact, in order to induce Beneficiary to enter into the transaction evidenced by the promissory note or notes or agreements which this Deed of Trust secures. If any of the events enumerated in the preceding subparagraphs (a) to (i), inclusive, occur and if Beneficiary consents to the same or fails to exercise its right to declare all sums secured hereby due and payable, such consent or failure shall not be deemed or construed as a waiver, and the consent of Beneficiary shall be required on all successive occurrences.

(10) That any award, settlement or damages for injury or damages to such property, or in connection with the transaction financed by such loan, and any award of damages in connection with any condemnation for public use of or injury to said property, or any part thereof, is hereby assigned and shall be paid to Beneficiary, who may apply or release such moneys received by it in such manner and with the same effect as above provided for the disposition of proceeds of fire or other insurance.

(11) That, by accepting payment of any sum secured hereby after its due date, or by making any payment or performing any act on behalf of Trustor that Trustor was obligated hereunder, but failed, to make, or perform, or by adding any payment so made by Beneficiary to the indebtedness secured hereby, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare a default for failure so to pay.

(12) That at any time, or from time to time, without liability therefor, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and any note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, or the lien of this Deed of Trust upon the remainder of said property for the full amount of the indebtedness then or thereafter secured hereby, or the rights or powers of the Beneficiary or the Trustee with respect to the remainder of said property, Trustee may (a) reconvey any part of such property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

(13) That the lien hereof shall remain in full force and effect during any postponement or extension of the time of payment of the indebtedness secured hereby, or any part thereof.

(14) That, upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note or notes to Trustee for cancellation and retention, and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto". Such request and reconveyance shall operate as a re-assignment of the rents, issues and profits hereinafter assigned to Beneficiary. Five (5) years after issuance of such full reconveyance, Trustee may destroy said note and this Deed of Trust (unless directed in such request to retain them).

(15) That Trustor does hereby grant, transfer and assign to Beneficiary all rents, income, issues and profits due or to become due hereafter for the occupancy or use of such property, except that Trustor reserves the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, income, issues and profits as they become due and payable.

(16) That upon default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may at any time without notice, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of such property, or any part thereof, in its own name sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine. The entering upon and taking possession of such property, the collection of such rents, issues and profits, and the application thereof as aforesaid, shall not cure or waive

the maximum allowed by law therefor at the time when such request is made, (f) such other charges as the Beneficiary may deem reasonable for services rendered by Beneficiary and furnished at Trustor's request or that of any successor in interest to Trustor, (g) if the security for this Deed of Trust is a leasehold estate, all payments and obligations req[illegible] of the Lessee or its successor in interest under the terms of [illegible] instrument or instruments creating such leasehold. Should Trustor fail to make any such payment, Beneficiary may elect to make such payment and any amount so paid may be added by Beneficiary to the indebtedness secured hereby and shall bear a like rate of interest. Trustor agrees to notify Beneficiary immediately upon receipt by Trustor of notice of any increase in the assessed value of the property covered by this Deed of Trust, and agrees that Beneficiary, in the name of Trustor, may contest by appropriate proceedings such increase in assessment, (h) if the security for this Deed of Trust be a condominium, community apartment or planned development, all payments and monetary obligations required of such condominium owner under the Declaration of Covenants, Conditions and Restrictions pertaining to such projects.

(5) To pay to Beneficiary, if Beneficiary shall so request, in addition to any other payments required hereunder, monthly advance installments, as estimated by Beneficiary, of taxes, assessments, and insurance premiums for the purpose of building up a fund to insure payment when due, or before delinquency, of any or all of the taxes, assessments and insurance premiums in paragraphs (2), (3) and (4) above. If the amounts paid to Beneficiary under the provisions of this paragraph are insufficient to discharge the obligations of Trustor to pay such premiums, taxes and assessments as the same become due or delinquent, Trustor shall pay to Beneficiary, upon its demand, such additional sums necessary to discharge Trustor's obligation to pay such premiums, taxes and assessments. All monies paid to Beneficiary under this paragraph may be intermingled with other monies of Beneficiary, but a separate non-interest bearing account, called "impound account", shall be maintained therefor. Debits may be made against such accounts for the payment by Beneficiary of premiums, taxes and assessments before they become due and payable, or at the option of Beneficiary for the payment of interest and principal due under the terms of the note secured hereby, plus any other amounts due, charges or other advances due or owing to Beneficiary pursuant to said promissory note, or under the terms and conditions of this Deed of Trust. If Trustor shall fail to pay any installment provided for in this paragraph, such failure shall constitute a default under this Deed of Trust. In the event of a default in the payment of any monies of any note secured hereby or under this Deed of Trust or default in the performance of any of the convenants and obligations of this Deed of Trust, then any balance remaining from monies paid Beneficiary under the provisions of this paragraph may, at the option of Beneficiary, be applied to the payment of principal and/or interest upon the obligation secured hereby in lieu of being applied to any of the purposes for which the impound account is established. Beneficiary will make such reports of the impound account as are required by law.

(6) That, should Trustor fail to make any payment or do any act as provided in this Deed of Trust, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof may (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes, (b) commence, appear in, or defend any action or proceeding purporting to affect the security hereof or the property covered by this Deed of Trust, or the rights or powers of Beneficiary or Trustee, (c) pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either is or appears to be prior or superior hereto, and (d) in exercising any such power, pay necessary expenses, employ counsel and pay his reasonable fees. Trustor agrees to repay any amount so expended on demand of Beneficiary, and any amount so expended may be added by Beneficiary to the indebtedness secured hereby and shall bear a like rate of interest. Trustor agrees that in the event that the real property which is subject to this Deed of Trust is now or hereafter used for commercial or residential income purposes, that when requested by Beneficiary, Trustor will promptly deliver to Beneficiary a certified financial statement together with a profit and loss statement which will be in form and content prepared according to the usual and acceptable accounting practices, which statement shall cover all of the financial operations of Trustor, including but not limited to the financial operations relating to the real property subject to this Deed of Trust, and Trustor further agrees when requested by Beneficiary to promptly deliver, in writing, such further additional information as required by Beneficiary relating to any of said financial statements.

(7) To appear in and defend any action or proceeding purporting to affect the security hereof or the property which is covered by this Deed of Trust, or the rights or powers of Beneficiary or Trustee, and, whether or not Trustor so appears or defends, to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, which shall not be less than $250.00, in any such action or proceeding in which Beneficiary or Trustee may appear by virtue of being made a party, defendant or otherwise, and irrespective of whether the interest of Beneficiary or Trustee in such property is directly questioned by such action, including any action for the condemnation or partition of said premises, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

(8) To pay immediately upon demand all sums, expended under the terms of this Deed of Trust by Beneficiary or Trustee, with interest from the date of expenditure at the rate which the principal obligation secured hereby bears at the time such payment is made, and the repayment of such sums shall be secured hereby.

of such property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(17) If the security SAF his Deed of Trust is a leasehold estate, Trustor agrees not to amend, change or modify his leasehold interest, or the terms on which he has such leasehold interest, or agree to do so, without the written consent of Beneficiary being first obtained. In the event of a violation of this provision Beneficiary shall have the right, at its option, to declare all sums secured hereby immediately due and payable. Consent to one such amendment, change or modification shall not be a waiver of the right to require such consent to any future amendment, change or modification. Waiver of the right to require such consent in one instance shall not be deemed to be a waiver of the right to require such consent in the event of amendments, changes or modifications occurring after the waiver. If the security for this Deed of Trust is a leasehold estate, the term "said property" as used in this Deed of Trust shall be deemed to mean the leasehold estate whenever the context so requires.

(18) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold such property, which notice Trustee shall cause to be filed for record. Beneficiary shall also deposit with Trustee this Deed of Trust and any notes and all documents evidencing expenditures, secured hereby. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell such property at the time and place fixed by it in such notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of such property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any convenant or warranty, express or implied. The recital in such deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale. After deducting all costs, fees and expenses of Trustee, and of this Trust, including cost of evidence of title in connection with this sale, Trustee shall apply the proceeds of sale to payment, first, of all sums expended under the terms hereof, not then repaid, with accrued interest at the rate then payable under the note or notes secured hereby, and then of all other sums secured hereby, and, if there be any proceeds remaining, shall distribute them to the person or persons legally entitled thereto.

(19) To waive the right to plead any statue of limitations as a defense to any demand secured hereby, to the fullest extent permissible by law.

(20) That Beneficiary may, from time to time, by instrument in writing substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the recorder of the county or counties where such property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyances from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties, including but not limited to the power to reconvey the whole or any part of the property covered by this Deed of Trust. Such instrument must contain the name of the original Trustor, Trustee, and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee. If notice of default shall have been recorded, this power of substitution cannot be exercised until after the costs, fees and expenses of the then acting Trustee shall have been paid to such Trustee, who shall endorse receipt thereof upon such instrument of substitution. The procedure herein provided for substitution of Trustees shall not be exclusive of other provisions for substitution provided by law.

(21) Should this Deed of Trust or any note secured hereby provide any fee for prepayment of any indebtedness secured hereby, Trustor agrees to pay said fee if any of said indebtedness shall be paid prior to the due date thereof stated in said Note or this Deed of Trust, even if and notwithstanding Trustor shall have defaulted in payment thereof, or in performance of any agreement hereunder, and Beneficiary, by reason thereof, shall have declared all sums secured hereby immediately due and payable.

(22) That Trustor has made certain representations and disclosures in order to induce Beneficiary to make the loan evidenced by the promissory note or notes which this Deed of Trust secures, and in the event that Trustor has made any material misrepresentation or failed to disclose any material fact, Beneficiary, at its option and without notice, shall have the right to declare the indebtedness secured hereby, irrespective of the maturity date specified in such note or notes immediately due and payable, and on failure to so pay may make a written declaration of default and demand for sale as in paragraph No. (18) herein set forth.

(23) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgee, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(24) Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

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The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

Signature of Trustor

Edwin Meese III

EDWIN MEESE, III

Ursula Meese

URSULA MEESE

INDIVIDUAL ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF San Diego } ss.

On February 14, 1981 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Edwin Meese, III and Ursula Meese

known to me to be the person s whose name s are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

(Seal)

OFFICIAL SEAL
TIMOTHY J. BROSMAN
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
MY COMMISSION EXPIRES NOVEMBER 16, [illegible]

Notary Public in and for said County and State.

CORPORATION ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF } ss.

On ________ before me, the undersigned, a Notary Public in and for said County and State, personally appeared ________

known to me to be the ________ President, and ________ known to me to be the ________ Secretary of the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its By-Laws or a Resolution of its Board of Directors.

WITNESS my hand and official seal.

(Seal)

Notary Public in and for said County and State.

PARTNERSHIP ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF } ss.

On ________ before me, the undersigned, a Notary Public in and for said County and State, personally appeared ________

known to me to be ________ of the partners of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.

(Seal)

Notary Public in and for said County and State

Deed of Trust

WITH POWER OF SALE

CALIFORNIA GENERAL
MORTGAGE SERVICE, INC.
as TRUSTEE

SAN DIEGO
FEDERAL SAVINGS AND
LOAN ASSOCIATION
BENEFICIARY

LEGAL DESCRIPTION "Exhibit A" 9

This is a supplemental to and made a part of this Deed of Trust Secured by San Diego Federal loan No. 0002

Lot 31 of AVOCADO ESTATES UNIT NO. 2, in the County of San Diego, State of California, according to Map thereof No. 5043, filed in the Office of the County Recorder of San Diego County, October 3, 1962.

TOGETHER WITH that portion of the Northerly one-half of an existing 60.00 foot easement for road as shown and designated on Record of Survey Map No. 3249, filed in the Office of the County Recorder, San Diego County, December 11, 1953, which lies between the Southerly prolongations of the Easterly and Westerly line of Lot 31 of said Avocado Estates Unit No. 2.

TOGETHER WITH all that portion of Lot 30 of AVOCADO ESTATES UNIT NO. 2, according to Map thereof No. 5043, filed in the Office of the County Recorder of San Diego County, October 3, 1962, described as follows:

Beginning at the Southwest corner of said Lot 30; thence South 89°41'50" East along the Southerly line of Lot 30, 127.69 feet to the TRUE POINT OF BEGINNING; thence North 0°18'10" East 3 feet; thence South 89°41'50" East 31.2 feet to a point of tangency with a 41 foot radius curve concave Northwesterly; thence Northeasterly along the arc of said curve 51.32 feet through a central angle of 71°43'10"; thence South 71°25'00" 3 feet to the East line of said Lot 30; thence along the East line of Lot 30, South 18°35' West 31.8 feet to the Southeasterly corner of said Lot 30; thence along the South line of said Lot 30, North 89°41'50" West 63.0 feet to the TRUE POINT OF BEGINNING.

Edwin Meese III

Edwin Meese, III

Ursula Meese

Ursula Meese

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

GREAT AMERICAN FEDERAL
SAVINGS & LOAN ASSOCIATION
P.O. BOX 2962
SAN DIEGO, CALIFORNIA 92112

Attention: G. L. Stickney, - Lobby

ORDER NO.

LOAN NO. 002

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MODIFICATION AGREEMENT

This Agreement, made April 28, 1982, by and between Great American Federal Savings and Loan formerly known as San Diego Federal Savings and Loan Association Association, a corporation, herein called "first party," and Edwin Meese, III and Ursula Meese, husband and wife herein called "second party."

WITNESSETH:

WHEREAS, first party has heretofore loaned to second party, or to his predecessor or predecessors, money evidenced by promissory note(s) as follows: One dated February 14, 1981 for $ 132,000.00 One hundred thirty two thousand and 00/100------------------ which note(s) is (are) secured by deed of trust to California General Mortgage Service, as trustee, recorded in the office of the County Recorder of San Diego County, State of California, on February 20, 1981, in Book 81, Series No. ____, File/Page 052481 of Official Records; and

WHEREAS, second party desires to modify the terms of said note(s) as herein provided,

NOW, THEREFORE, in consideration of the premises and the agreements hereinafter contained, it is hereby agreed that:

1. Second party hereby acknowledges that the unpaid balance of the said loan is $ 132,000.00 principal, plus interest on said sum at the rate of 15.0 percent per annum from February 21, 1981, and hereby (a) waives (if and to the fullest extent such waiver is permitted by law) the benefit of the statutes of limitation as now existing or hereafter amended in relation to said note(s) or any payments, extensions, or renewals thereof; (b) agrees and guarantees that any extensions, renewals, or forbearance of any portion of the obligation evidenced by said note(s) shall in no way affect his liability hereunder; and (c) agrees and guarantees to pay all interest and principal of said loan as follows:

Second Party agrees and guarantees to pay said principal sum of $132,000.00 on Demand Option, if no demand then on or before August 16, 1982, with interest from February 21, 1981, at the rate of 15.00% per annum, interest payable on said date of maturity of August 16, 1982. All other terms and conditions remain in full force and effect.

GREAT AMERICAN FEDERAL
PAID
LOAN OFFICE

Each payment shall be applied first on interest then due, and the remainder on principal; provided, however, that the first party, at its option, may apply all or any part of any payment to the repayment of any advances.

2. Second party expressly represents that the property described in said deed of trust is not subject to any encumbrances subsequent to said deed of trust and that no one other than the second party has any interest in said property.

3. First party executes this agreement on the condition that it shall not prejudice any present or future rights, remedies, benefits or powers belonging or accruing to it or to the trustee under said deed of trust, whether arising out of said note(s) or out of said deed of trust.

4. In all other respects said note (s) and deed of trust shall remain unaffected, unchanged, and unimpaired by reason of this agreement.

In this agreement whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Edwin Meese III
Edwin Meese, III

Ursula Meese
Ursula Meese

GREAT AMERICAN FEDERAL SAVINGS
AND LOAN ASSOCIATION

By

By

STATE OF CALIFORNIA
COUNTY OF San Diego } SS.

On May 3, 1982 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Edwin Meese III and Ursula Meese known to me to be the person(s) whose name(s) subscribed to the within instrument and acknowledged that they executed the same.

Lois J. Lofft

SAFECO

FOR NOTARY SEAL OR STAMP

OFFICIAL SEAL
LOIS J. LOFFT
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires Nov. 5, 1983

ATTACHMENT (5)

Loan No. 002

SECURED STRAIGHT NOTE—INTEREST INCLUDED

$ 132,000.00

San Diego, California, February 14, 19 81

DO NOT DESTROY THIS NOTE: When paid, this Note, with Deed of Trust securing same, must be surrendered to the Trustee for cancellation before reconveyance will be made.

On or before February 15, 19 82 for value received, I promise to pay to SAN DIEGO FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation, or order, at its main office in the City of San Diego, State of California, the sum of ONE HUNDRED THIRTY TWO THOUSAND-- Dollars, in lawful money of the United States, with interest from date hereof on the unpaid principal at the rate of 15 percent per annum payable Monthly on demand, option if no demand on February 15, 1982 the first of said interest payments to be due on March 11, 19 81

Each payment shall be credited first to interest then due with the remainder if any to principal.

In the event of default as to any payment due upon this Note, or as to any provision contained in the Deed of Trust securing this Note, the entire sum of principal, interest, penalties, and fees, as herein provided, shall become immediately due and payable at the option of the holder of this Note.

[illegible]

In the event that legal action be instituted on the collection of this Note, I promise to pay such sum as the court may fix as attorney's fees for such action.

Should this Note be signed by more than one person, firm and/or corporation, all of the obligations herein contained shall be considered joint and several obligations of each signer.

This Note is secured by a Deed of Trust to California General Mortgage Service, Inc., a corporation, as Trustee, which said Deed of Trust contains the following provisions for acceleration of the indebtedness evidenced by the note:

> "(9) Beneficiary shall have the right, at its option, to declare all sums secured hereby immediately due and payable within 30 days after such declaration, if Trustor or any successor in interest to Trustor (a) conveys, transfers or assigns the property or any part thereof, whether by deed, contract of sale, lease with option to buy, or otherwise; or (b) further encumbers or alienates the property or any part thereof; or (c) leases the property or any part thereof for a term, together with all exercisable options, of 5 years or more; or (d) suffers his title or any interest therein to be divested, whether voluntarily or involuntarily; or (e) changes or permits to be changed the characteristics or use of the property, including without limitation, drilling or extracting oil, gas or other hydrocarbon substances, or any mineral of any kind or character; or (f) if suit be commenced to condemn the property as being unfit for human use and occupancy or to abate as a nuisance activities or conditions found thereon or for the partition or sale of said property; or (g) if Trustor is a partnership, any of the general partners' interests are transferred or assigned, whether voluntarily or involuntarily; or (h) if Trustor is a corporation and more than 25% of the capital stock thereof is sold, transferred or assigned during a 12 month period; or (i) has made any oral or written material misrepresentation or failed to disclose any material fact, in order to induce Beneficiary to enter into the transaction evidenced by the promissory note or notes or agreements which this Deed of Trust secures . . ."

Edwin Meese III
Edwin Meese, III

Ursula Meese
Ursula Meese

Superseded by Note dated same date/executed by Edwin Meese, III thru
Power of Attorney By: Ursula Meese and Ursula Meese

333

GREAT AMERICAN FEDERAL
PAID
MAIN OFFICE

C-319 (Rev 5/79)

Loan No. 002

SECURED STRAIGHT NOTE—INTEREST INCLUDED

$ 132,000.00

San Diego, California, February 14, 19 81

DO NOT DESTROY THIS NOTE: When paid, this Note, with Deed of Trust securing same, must be surrendered to the Trustee for cancellation before reconveyance will be made.

On or before February 15, 19 82 for value received, I promise to pay to SAN DIEGO FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation, or order, at its main office in the City of San Diego, State of California, the sum of One Hundred Thirty Two Thousand -- Dollars, in lawful money of the United States, with interest from date hereof on the unpaid principal at the rate of 15 percent per annum payable At Maturity on Demand, option if no Demand on February 15, 1982 ~~[illegible]~~

Each payment shall be credited first to interest then due with the remainder if any to principal.

In the event of default as to any payment due upon this Note, or as to any provision contained in the Deed of Trust securing this Note, the entire sum of principal, interest, penalties, and fees, as herein provided, shall become immediately due and payable at the option of the holder of this Note.

~~[illegible]~~

In the event that legal action be instituted on the collection of this Note, I promise to pay such sum as the court may fix as attorney's fees for such action.

Should this Note be signed by more than one person, firm and/or corporation, all of the obligations herein contained shall be considered joint and several obligations of each signer.

This Note is secured by a Deed of Trust to California General Mortgage Service, Inc., a corporation, as Trustee, which said Deed of Trust contains the following provisions for acceleration of the indebtedness evidenced by the note:

> "(9) Beneficiary shall have the right, at its option, to declare all sums secured hereby immediately due and payable within 30 days after such declaration, if Trustor or any successor in interest to Trustor (a) conveys, transfers or assigns the property or any part thereof, whether by deed, contract of sale, lease with option to buy, or otherwise; or (b) further encumbers or alienates the property or any part thereof; or (c) leases the property or any part thereof for a term, together with all exercisable options, of 5 years or more; or (d) suffers his title or any interest therein to be divested, whether voluntarily or involuntarily; or (e) changes or permits to be changed the characteristics or use of the property, including without limitation, drilling or extracting oil, gas or other hydrocarbon substances, or any mineral of any kind or character; or (f) if suit be commenced to condemn the property as being unfit for human use and occupancy or to abate as a nuisance activities or conditions found thereon or for the partition or sale of said property; or (g) if Trustor is a partnership, any of the general partners' interests are transferred or assigned, whether voluntarily or involuntarily; or (h) if Trustor is a corporation and more than 25% of the capital stock thereof is sold, transferred or assigned during a 12 month period; or (i) has made any oral or written material misrepresentation or failed to disclose any material fact, in order to induce Beneficiary to enter into the transaction evidenced by the promissory note or notes or agreements which this Deed of Trust secures . . ."

Edwin Meese III
by: [illegible]
Power of Attorney

Edwin Meese, III

Ursula Meese

Ursula Meese

GREAT AMERICAN FEDERAL
PAID
8/[illegible]/82
MAIN OFFICE

C-319 (Rev 5/79)

Loan No. 119

SECURED STRAIGHT NOTE–INTEREST INCLUDED

$ 21,000.00

San Diego, California, April 28, , 19 82

DO NOT DESTROY THIS NOTE: When paid, this Note, with Deed of Trust securing same, must be surrendered to the Trustee for cancellation before reconveyance will be made.

On Demand Option if no demand then
On or before ~~August 16,~~ , 19 82 , for value received, I promise to pay to GREAT AMERICAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation, or order, at its main office in the City of San Diego, State of California, the sum of Twenty one thousand and 00/100-- Dollars, in lawful money of the United States, with interest from date of disbursement of proceeds, on the unpaid principal at the rate of 15.00 percent per annum payable at maturity /on

on August 16, 19 82 , the first of said interest payments to be due

Each payment shall be credited first to interest then due with the remainder if any to principal.

In the event of default as to any payment due upon this Note, or as to any provision contained in the Deed of Trust securing this Note, the entire sum of principal, interest, penalties, and fees, as herein provided, shall become immediately due and payable at the option of the holder of this Note

~~A fee equal to ______ percent of any payment due may be charged at the option of the holder of this Note, for any said payment not received on or before the due date.~~

In the event that legal action be instituted on the collection of this Note, I promise to pay such sum as the court may fix as attorney's fees for such action.

Should this Note be signed by more than one person, firm and/or corporation, all of the obligations herein contained shall be considered joint and several obligations of each signer

This Note is secured by a Deed of Trust to California General Mortgage Service, Inc., a corpo [illegible] ustee, which said Deed of Trust contains the following provisions for acceleration of the indebtedness evidenced by the note:

> "In the event of sale or transfer of all or any portion of the real property covered by this Deed of Trust, the entire balance of the principal and interest secured hereby shall, at the option of the holder hereof, become immediately due and payable. If the option is not exercised, a reasonable transfer fee shall be paid."
>
> "(9) Beneficiary shall have the right, at its option, to declare all sums secured hereby immediately due and payable within 30 days after such declaration, if Trustor or any successor in interest to Trustor (a) conveys, transfers or assigns the property or any part thereof, whether by deed, contract of sale, lease with option to buy, or otherwise; or (b) further encumbers or alienates the property or any part thereof; or (c) leases the property or any part thereof for a term, together with all exercisable options, of 5 years or more; or (d) suffers his title or any interest therein to be divested, whether voluntarily or involuntarily; or (e) changes or permits to be changed the characteristics or use of the property, including without limitation, drilling or extracting oil, gas or other hydrocarbon substances, or any mineral of any kind or character; or (f) if suit be commenced to condemn the property as being unfit for human use and occupancy or to abate as a nuisance activities or conditions found thereon or for the partition or sale of said property; or (g) if Trustor is a partnership, any of the general partners' interests are transferred or assigned, whether voluntarily or involuntarily; or (h) if Trustor is a corporation and more than 25% of the capital stock thereof is sold, transferred or assigned during a 12 month period; or (i) has made any oral or written material misrepresentation or failed to disclose any material fact, in order to induce Beneficiary to enter into the transaction evidenced by the promissory note or notes or agreements which this Deed of Trust secures . . ."

10911 Sunray Drive
La Mesa, California 92041

Edwin Meese III
Edwin Meese III

Ursula Meese
Ursula Meese

GREAT AMERICAN FEDERAL
PAID
MAIN OFFICE

ATTACHMENT (6)

RECORDED AT THE REQUEST OF: 70
SAFECO TITLE INSURANCE CO.
RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

GREAT AMERICAN FEDERAL
SAVINGS AND LOAN ASSOCIATION
600 "B" Street, San Diego, CA 92183
Attn: C. L. Stickney

ORDER NO.
LOAN NO. 119

82-133653

RECORDED IN
OFFICIAL RECORDS
OF SAN DIEGO COUNTY, CA.

1982 MAY -6 AM 10: 32

VERA L. LYLE
COUNTY RECORDER

RF 6
MG 1
LF

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST AND ASSIGNMENT OF RENTS

(THIS IS ☐ IS NOT ☒ A CONSTRUCTION DEED OF TRUST)

THIS DEED OF TRUST, made this 28th day of April, 19 82, between

Edwin Meese, III and Ursula Meese, Husband and Wife

herein called TRUSTOR, whose address is 1075 Spring Hill Road, McLean, VA . 22102
(Number and Street, City, County and State)

CALIFORNIA GENERAL MORTGAGE SERVICE, INC., a corporation, of San Diego, California, herein called TRUSTEE and GREAT AMERICAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation, of San Diego, California, herein called BENEFICIARY.

WITNESSETH: That Trustor irrevocably grants, transfers and assigns to Trustee, in trust, with power of sale, that real property in San Diego County, California, described as:

Lots 30 and 31 of AVOCADO ESTATES UNIT NO. 2, according to Map thereof No. 5043 filed in the Office of the County Recorder of San Diego County, October 3, 1962 as more particularly described in Exhibit "A" attached hereto and made a part hereof.

TOGETHER WITH (a) all buildings and improvements, fixtures and appurtenances now, or hereafter placed, thereon, it being understood and agreed that all classes of property attached or unattached, other than consumable goods, used in connection therewith shall be deemed fixtures, and (b) the rents, income, issues and profits of all property covered by this deed of trust, SUBJECT, HOWEVER, to the assignment incorporated herein, to Beneficiary, of such rents, income, issues and profits.

FOR THE PURPOSE OF SECURING:

1. Payment of the sum of $ 21,000.00 with interest thereon according to the terms of a promissory note or notes of even date herewith, made by Trustor, payable to Beneficiary or order, and all extensions or renewals thereof. 2. Performance of each agreement of Trustor contained herein. 3. Payment of such additional sums, with interest thereon (a) as may be hereafter borrowed from Beneficiary by the then record owner or owners of the above property when evidenced by another promissory note or notes, or (b) as may be added to the indebtedness secured hereby in accordance with the provisions of this Deed of Trust. 4. Payment, with interest thereon, of any other present or future indebtedness or obligation of the Trustor (or of any successor in interest of the Trustor to said property) to the Beneficiary, whether created directly or acquired by assignment, whether absolute or contingent, whether due or not, whether otherwise secured or not, or whether existing at the time of the execution of this Deed of Trust or arising thereafter. 5. Performance, if this is a construction loan, of each agreement of Trustor contained in the Building Loan Agreement and Assignment of Account between Trustor and Beneficiary. 6. Performance by Trustor, if the security hereunder is a leasehold interest, of each agreement of lessee contained in the lease creating such leasehold. 7. Compliance by Trustor, if the security hereunder is a condominium, community apartment or planned development, with each and every monetary provision or covenant to be performed by Trustor under the Declaration of Covenants, Conditions and Restrictions pertaining to the condominium project and, upon written request of Beneficiary, the enforcement by Trustor of the covenant against other owners in such project to pay maintenance charges, if the same have not been paid or valid legal steps taken to enforce such payment within 90 days after such written request is made. 8. Payment of the fees and charges of Beneficiary whether or not described herein.

* This Deed of Trust is 4th and subsequent to three deeds of trust presently of record.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) To keep such property in good condition and repair, not to substantially alter, remove or demolish any buildings thereon, to restore promptly and in good workmanlike manner any buildings which may be damaged or destroyed including, without restricting the generality of the foregoing, damage from termites and dry rot, to pay when due all claims for labor performed and materials furnished in connection with such property and not to permit any mechanics' liens against such property, to comply with all laws affecting such property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereon, not to commit, suffer or permit any act upon such property in violation of law, and to cultivate, irrigate, fertilize, fumigate, prune, and to do all other acts that from the character or use of said property may be reasonably necessary. If the loan secured hereby, or any part thereof, is being obtained for the purpose of constructing improvements on such property, anything in this Deed of Trust to the contrary notwithstanding, Trustor further agrees (a) to complete the same in accordance with plans and specifications satisfactory to Beneficiary, and to comply with all the provisions of the building loan agreement entered into with Beneficiary, (b) to allow Beneficiary to inspect such property at all times during construction, (c) to replace any work or materials unsatisfactory to Beneficiary within fifteen (15) calendar days after written notice from Beneficiary of such fact, which notice may be given to Trustor by registered or certified mail, sent to his last known address, or by personal service of the same, and (d) that work shall not cease on the construction of such improvements for any reason whatsoever for a period of fifteen (15) calendar days, whether consecutive or not, without the written permission of Beneficiary, (e) to promptly pay all claims for labor performed and materials furnished in connection with the said construction and not to permit any claims of lien for said work or material to be filed of record against the said property. If the said property is part of a larger tract upon which improvements will be constructed, Trustor shall make separate contracts and sub-contracts for said construction which shall pertain to the said property only and shall keep separate, full and complete records of all work and materials furnished to the said property. Trustee, upon presentation to it of an affidavit signed by Beneficiary setting forth facts showing a default by Trustor under this paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

(2) To provide and maintain in force, at all times, fire and other types of insurance as may be required by Beneficiary, each in an amount satisfactory to and with loss payable to Beneficiary. The policies of such insurance shall be for a term and in form and content and in such companies as may be satisfactory to Beneficiary, and shall be delivered to, and remain in possession of, Beneficiary as further security for the faithful performance of these trusts. At least thirty (30) days prior to the expiration of any insurance policy, a policy or policies renewing or extending such expiring insurance shall be delivered to Beneficiary together with written evidence showing payment of the premium therefor and, in the event any such insurance policy and evidence of payment of the premium are not so delivered by Trustor to Beneficiary, Trustor by executing this Deed of Trust specifically requests Beneficiary to obtain such insurance. Beneficiary, but without obligation so to do, without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may obtain such insurance through or from any insurance agency or company acceptable to it, pay the premium therefor, and add the amount thereof to the indebtedness secured hereby which amount shall bear a like rate of interest. Beneficiary, from time to time, may furnished to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Beneficiary pursuant hereto, and any information concerning the loan secured hereby. Neither Trustee nor Beneficiary shall be responsible for such insurance or for the collection of any insurance moneys, or for any insolvency of any insurer or insurance underwriter. Any and all unexpired insurance shall inure to the benefit of, and pass to the purchaser of, the property conveyed at any Trustee's sale held hereunder. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or, at the option of Beneficiary, any part or all of such amount may, without reducing the indebtedness secured hereby, either be used to replace, restore, or reconstruct the property covered by this Deed of Trust to a condition satisfactory to Beneficiary, or be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) That, in the event Trustor shall maintain life, accident or health insurance and Beneficiary shall be the owner or holder of any policy or policies of such insurance as further security hereunder and Trustor shall default in payment of any premium thereof, Beneficiary may elect to pay any such premium, and any amount so paid may be added by Beneficiary to the indebtedness secured hereby and shall bear a like rate of interest.

(4) To pay, satisfy and discharge (a) at least ten (10) days before delinquency, all general and special City and County taxes, and all assessments on appurtenant water stock, affecting such property, (b) when due, all special assessments for public improvements, without permitting any improvement bond to issue for any special assessment, (c) all encumbrances, charges and liens, with interest, on said property, or any part thereof, which are, or appear to Beneficiary to be, prior to or superior hereto, (d) all costs, fees, charges and expenses of this trust, whether or not described herein, (e) for any statement regarding the obligation secured hereby any amount demanded by Beneficiary not to exceed the maximum allowed by law therefor at the time when such request is made, (f) such other charges as the Beneficiary may deem reasonable for services rendered by Beneficiary and furnished at Trustor's request or that of any successor in interest to Trustor, (g) if the security for this Deed of Trust is a leasehold

(9) Beneficiary shall have the right, at its option, to declare all sums secured hereby immediately due and payable within 30 days after such declaration, if Trustor or any successor in interest to Trustor (a) conveys, transfers or assigns the property or any part thereof, whether by deed, contract of sale, lease with option to buy, or otherwise; or (b) further encumbers or alienates the property or any part thereof; or (c) leases the property or any part thereof for a term, together with all exercisable options, of 5 years or more; or (d) suffers his title or any interest therein to be divested, whether voluntarily or involuntarily; or (e) changes or permits to be changed the character or use of the property, including, without limitations, drilling or extracting oil, gas, or other hydrocarbon substances, or any mineral of any kind or character; or (f) if suit be commenced to condemn the property as being unfit for human use and occupancy or to abate as a nuisance activities or conditions found thereon or for the partition or sale of said property; or (g) if Trustor is a partnership, any of the general partners' interests are transferred or assigned, whether voluntarily or involuntarily; or (h) if Trustor is a corporation and more than 25 per cent of the capital stock thereof is sold, transferred or assigned during a twelve-month period; or (i) has made any oral or written material misrepresentation or failed to disclose any material fact, in order to induce Beneficiary to enter into the transaction evidenced by the promissory note or notes or agreements which this Deed of Trust secures. If any of the events enumerated in the preceding subparagraphs (a) to (i), inclusive, occur and if Beneficiary consents to the same or fails to exercise its right to declare all sums secured hereby due and payable, such consent or failure shall not be deemed or construed as a waiver, and the consent of Beneficiary shall be required on all successive occurrences.

(10) That any award, settlement or damages for injury or damages to such property, or in connection with the transaction financed by such loan, and any award of damages in connection with any condemnation for public use of or injury to said property, or any part thereof, is hereby assigned and shall be paid to Beneficiary, who may apply or release such monies received by it in such manner and with the same effect as above provided for the disposition of proceeds of fire or other insurance.

(11) That, by accepting payment of any sum secured hereby after its due date, or by making any payment or performing any act on behalf of Trustor that Trustor was obligated hereunder, but failed, to make, or perform, or by adding any payment so made by Beneficiary to the indebtedness secured hereby, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare a default for failure so to pay.

(12) That at any time, or from time to time, without liability therefor, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and any note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, or the lien of this Deed of Trust upon the remainder of said property for the full amount of the indebtedness then or thereafter secured hereby, or the rights or powers of the Beneficiary or the Trustee with respect to the remainder of said property, Trustee may (a) reconvey any part of such property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

(13) That the lien hereof shall remain in full force and effect during any postponement or extension of the time of payment of the indebtedness secured hereby, or any part thereof.

(14) That, upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said note or notes to Trustee for cancellation and retention, and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto". Such request and reconveyance shall operate as a re-assignment of the rents, issues and profits hereinafter assigned to Beneficiary. Five (5) years after issuance of such full reconveyance, Trustee may destroy said note and this Deed of Trust (unless directed in such request to retain them).

(15) That Trustor does hereby grant, transfer and assign to Beneficiary all rents, income, issues and profits due or to become due hereafter for the occupancy or use of such property, except that Trustor reserves the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, income, issues and profits as they become due and payable.

(16) That upon default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may at any time without notice, either in person, by agent, or by receiver to be appointed by the court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of such property, or any part thereof, in its own name sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine. The entering upon and taking possession of such property, the collection of such rents, issues and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

or at Trustor's request or that of any successor in interest to Trustor, (g) if the security for this Deed of Trust is a leasehold estate, all payments and obligations required of the Lessee or its successor in interest under the terms of the instrument or instruments creating such leasehold. Should Trustor fail to make any such payment, Beneficiary may elect to make such payment and any amount so paid may be added by Beneficiary to the indebtedness secured hereby and shall bear a like rate of interest. Trustor agrees to notify Beneficiary immediately upon receipt by Trustor of notice of any increase in the assessed value of the property covered by this Deed of Trust, and agrees that Beneficiary, in the name of Trustor, may contest by appropriate proceedings such increase in assessment, (h) if the security for this Deed of Trust be a condominium, community apartment or planned development, all payments and monetary obligations required of such condominium owner under the Declaration of Covenants, Conditions and Restrictions pertaining to such projects.

(5) To pay to Beneficiary, if Beneficiary shall so request, in addition to any other payments required hereunder, monthly advance installments, as estimated by Beneficiary, of taxes, assessments, and insurance premiums for the purpose of building up a fund to insure payment when due, or before delinquency, of any or all of the taxes, assessments and insurance premiums in paragraphs (2), (3) and (4) above. If the amounts paid to Beneficiary under the provisions of this paragraph are insufficient to discharge the obligations of Trustor to pay such premiums, taxes and assessments as the same become due or delinquent, Trustor shall pay to Beneficiary, upon its demand, such additional sums necessary to discharge Trustor's obligation to pay such premiums, taxes and assessments. All monies paid to Beneficiary under this paragraph may be intermingled with other monies of Beneficiary, but a separate non-interest bearing account, called "impound account", shall be maintained therefor. Debits may be made against such accounts for the payment by Beneficiary of premiums, taxes and assessments before they become due and payable, or at the option of Beneficiary for the payment of interest and principal due under the terms of the note secured hereby, plus any other amounts due, charges or other advances due or owing to Beneficiary pursuant to said promissory note, or under the terms and conditions of this Deed of Trust. If Trustor shall fail to pay any installment provided for in this paragraph, such failure shall constitute a default under this Deed of Trust. In the event of a default in the payment of any monies of any note secured hereby or under this Deed of Trust or default in the performance of any of the convenants and obligations of this Deed of Trust, then any balance remaining from monies paid Beneficiary under the provisions of this paragraph may, at the option of Beneficiary, be applied to the payment of principal and/or interest upon the obligation secured hereby in lieu of being applied to any of the purposes for which the impound account is established. Beneficiary will make such reports of the impound account as are required by law.

(6) That, should Trustor fail to make any payment or do any act as provided in this Deed of Trust, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof may (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes, (b) commence, appear in, or defend any action or proceeding purporting to affect the security hereof or the property covered by this Deed of Trust, or the rights or powers of Beneficiary or Trustee, (c) pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either is or appears to be prior or superior hereto, and (d) in exercising any such power, pay necessary expenses, employ counsel and pay his reasonable fees. Trustor agrees to repay any amount so expended on demand of Beneficiary, and any amount so expended may be added by Beneficiary to the indebtedness secured hereby and shall bear a like rate of interest. Trustor agrees that in the event that the real property which is subject to this Deed of Trust is now or hereafter used for commercial or residential income purposes, that when requested by Beneficiary, Trustor will promptly deliver to Beneficiary a certified financial statement together with a profit and loss statement which will be in form and content prepared according to the usual and acceptable accounting practices, which statement shall cover all of the financial operations of Trustor, including but not limited to the financial operations relating to the real property subject to this Deed of Trust, and Trustor further agrees when requested by Beneficiary to promptly deliver, in writing, such further additional information as required by Beneficiary relating to any of said financial statements.

(7) To appear in and defend any action or proceeding purporting to affect the security hereof or the property which is covered by this Deed of Trust, or the rights or powers of Beneficiary or Trustee, and, whether or not Trustor so appears or defends, to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, which shall not be less than $250.00, in any such action or proceeding in which Beneficiary or Trustee may appear by virtue of being made a party, defendant or otherwise, and irrespective of whether the interest of Beneficiary or Trustee in such property is directly questioned by such action, including any action for the condemnation or partition of said premises, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

(8) To pay immediately upon demand all sums, expended under the terms of this Deed of Trust by Beneficiary or Trustee, with interest from the date of expenditure at the rate which the principal obligation secured hereby bears at the time such payment is made, and the repayment of such sums shall be secured hereby.

[illegible] default hereunder or invalidate any act done pursuant to such notice.

(17) If the security for this Deed of Trust is a leasehold estate, Trustor agrees not to amend, change or modify his leasehold interest, or the terms on which he has such leasehold interest, or agree to do so, without the written consent of Beneficiary being first obtained. In the event of a violation of this provision Beneficiary shall have the right, at its option, to declare all sums secured hereby immediately due and payable. Consent to one such amendment, change or modification shall not be a waiver of the right to require such consent in any future amendment, change or modification. Waiver of the right to require such consent in one instance shall not be deemed to be a waiver of the right to require such consent in the event of amendments, changes or modifications occurring after the waiver. If the security for this Deed of Trust is a leasehold estate, the term "said property" as used in this Deed of Trust shall be deemed to mean the leasehold estate whenever the context so requires.

(18) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold such property, which notice Trustee shall cause to be filed for record. Beneficiary shall also deposit with Trustee this Deed of Trust and any notes and all documents evidencing expenditures, secured hereby. After the lapse of such time as then may be required by law following recordation of such notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell such property at the time and place fixed by it in such notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of such property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any convenant or warranty, express or implied. The recital in such deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale. After deducting all costs, fees and expenses of Trustee, and of this Trust, including cost of evidence of title in connection with this sale, Trustee shall apply the proceeds of sale to payment, first, of all sums expended under the terms hereof, not then repaid, with accrued interest at the rate then payable under the note or notes secured hereby, and then of all other sums secured hereby, and, if there be any proceeds remaining, shall distribute them to the person or persons legally entitled thereto.

(19) To waive the right to plead any status of limitations as a defense to any demand secured hereby, to the fullest extent permissible by law.

(20) That Beneficiary may, from time to time, by instrument in writing substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the recorder of the county or counties where such property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyances from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties, including but not limited to the power to reconvey the whole or any part of the property covered by this Deed of Trust. Such instrument must contain the name of the original Trustor, Trustee, and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee. If notice of default shall have been recorded, this power of substitution cannot be exercised until after the costs, fees and expenses of the then acting Trustee shall have been paid to such Trustee, who shall endorse receipt thereof upon such instrument of substitution. The procedure herein provided for substitution of Trustees shall not be exclusive of other provisions for substitution provided by law.

(21) Should this Deed of Trust or any note secured hereby provide any fee for prepayment of any indebtedness secured hereby, Trustor agrees to pay said fee if any of said indebtedness shall be paid prior to the due date thereof stated in said Note or this Deed of Trust, even if and notwithstanding Trustor shall have defaulted in payment thereof, or in performance of any agreement hereunder, and Beneficiary, by reason thereof, shall have declared all sums secured hereby immediately due and payable.

(22) That Trustor has made certain representations and disclosures in order to induce Beneficiary to make the loan evidenced by the promissory note or notes which this Deed of Trust secures, and in the event that Trustor has made any material misrepresentation or failed to disclose any material fact, Beneficiary, at its option and without notice, shall have the right to declare the indebtedness secured hereby, irrespective of the maturity date specified in such note or notes immediately due and payable, and on failure to so pay may make a written declaration of default and demand for sale as in paragraph No. (18) herein set forth.

(23) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgee, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(24) Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

Signature of Trustor

Edwin Meese III
Edwin Meese III

XX Ursula Meese
Ursula Meese

INDIVIDUAL ACKNOWLEDGMENT

STATE OF California
COUNTY OF San Diego } ss.

On May 3, 1982 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Edwin Meese III and Ursula Meese

known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

(Seal)

OFFICIAL SEAL
LOIS J. LOFFT
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires Nov. 5, 1983

Lois J. Lofft
Notary Public in and for said County and State

CORPORATION ACKNOWLEDGMENT

STATE OF
COUNTY OF

On ________ before me, the undersigned, a Notary Public in and for said County and State, personally appeared ________

known to me to be the ________ President, and ________ known to me to be the ________ Secretary of the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its By-Laws or a Resolution of its Board of Directors.

WITNESS my hand and official seal.

(Seal)

Notary Public in and for said County and State

PARTNERSHIP ACKNOWLEDGMENT

STATE OF
COUNTY OF } ss.

On ________ before me, the undersigned, a Notary Public in and for said County and State, personally appeared ________

known to me to be ________ of the partners of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.

(Seal)

Notary Public in and for said County and State

Deed of Trust

WITH POWER OF SALE

CALIFORNIA GENERAL
MORTGAGE SERVICE, INC.
as TRUSTEE

GREAT AMERICAN
FEDERAL SAVINGS AND
LOAN ASSOCIATION
BENEFICIARY

Senator METZENBAUM. Mr. Chairman, I had previously asked for Mr. Fielding to be present, and in the interim, you have advised me that Mr. Fielding cannot come down. I do not know why, but——

Senator LAXALT. Well, let me explain why.

Senator METZENBAUM. Sure, of course.

Senator LAXALT. He is a White House official, dealing in sensitive matters like ethics. For him to come here in response to a request of this committee would actually create a terrible precedent, which he is not willing to set, and I agree wholeheartedly. If this were a different administration, I would still agree with his position, because here he sits in ethics, and certainly, he has to ask hard questions as these matters arise. If there were the possibility, or certainly the probability, that he would be responsive to this committee and have to come here and testify under oath, people talking to him are going to be less than candid.

But he wants to cooperate.

Senator METZENBAUM. Are you suggesting a term that is so sensitive around here, that he is claiming executive privilege?

Senator LAXALT. Oh, I am out characterizing it on that technical legal basis. We did not discuss it that way. He is just not inclined to come because of the reasons that I have mentioned. We would establish a principle that he thinks would be extremely harmful, and I tend to agree.

But he wants to be cooperative, as I indicated to the Senator, and if the Senator will frame the questions to him in writing, Mr. Fielding will respond, in the areas delineated previously.

Senator METZENBAUM. Is it fair for me to ask, will Mr. Fielding respond under oath, as all other witnesses will respond under oath?

Senator LAXALT. We did not discuss that.

Senator METZENBAUM. Let me discuss that with my colleagues, and then I will get back to you.

Senator LAXALT. Very well, very well.

Do you have any questions, Senator Mathias?

Senator MATHIAS. No questions.

Senator LAXALT. We will be in recess now until 4:30.

[Short recess.]

[Whereupon Senator Biden assumed the Chair.]

Senator BIDEN. The committee will come to order.

Congressman Conyers, I am sorry to keep you waiting. Senator Simpson is on his way, and he will be chairing the hearing, but in the interest of your time, and I know how busy you are, we would like to offer you the opportunity—it will be a little like preaching to the choir with me here, but your testimony will be available for everyone to hear and read, and as I said, Senator Simpson is on his way.

So, rather than keep you waiting, why don't you proceed, Congressman, in any way that is most expeditious for you. We have been trying roughly to keep people to 10 minutes, but you take as long as you want, any time you need.

STATEMENT OF HON. JOHN CONYERS, JR., REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. CONYERS. Thank you very much, Mr. Chairman.

I appreciate very much the opportunity to come here today and express my concerns regarding the nomination of Mr. Edwin Meese for the position of Attorney General. It is neither an enjoyable nor a sought-after task to criticize the nomination of any President. It is something I rarely do, and I trust that I will be able to make the case which raises the issue of the importance of the nominee having a public background that unequivocally documents his commitment to the rule of law.

What I mean is that the Attorney General is the chief independent law enforcer in America, and must therefore be able to enforce the laws as determined by the Congress as well as the courts, and this is no easy matter.

In the area of civil rights and civil liberties enforcement is especially difficult in this period of our history, where law, custom, and practice still make it a very difficult task to deliver the Constitution and what it means to all citizens of the land.

So I come here to put in question some of the conduct, comments, and activities of the nominee with reference to several specific matters, and then I would like to make a request that he appear, or reappear before this distinguished committee to make an accounting in some other civil rights matters on which it would be very important to have an expression of his views on the record before these confirmation proceedings are closed.

The cases I would like to mention in which I think the nominee has had some involvement, that would be of importance to this Committee are, of course, the Bob Jones University matter; the matter of the Legal Services Corporation; the *Seattle Voluntary School Desegregation* case; the *New Orleans Police Department Affirmative Action* case, and *the Civil Rights Commission.*

With reference to Bob Jones University, of course, there seems to be little question that the nominee had direct involvement, as indicated even by his own testimony, in the administration's opposition to an established Internal Revenue Service policy denying tax-exempt status to schools which discriminate on the basis of race.

The problem is that the position that he took and perhaps initiated within the administration, is in direct contradiction to the 11-year Internal Revenue Service policy, which has been supported by numerous congressional mandates, including a Senate select committee report which affirms the correctness of the policy. Even a report issued by the senior attorneys at the Department of Justice concluded that the "actions of Congress since 1970 leave no doubt that the IRS reached the correct conclusion in exercising its authority."—of course, the Supreme Court has gone on to make a statement of the principles involved in that case. But I think it goes to the point that brings me here to put before this committee, regarding the nominee's ability to adhere to the rule of law, not to political ideology, not to the whims or predilections of any administration. We have little assurance that he would operate as independently, as effectively, as vigorously as would be required by law in civil rights matters.

I make this point because the questions around civil rights enforcement that derive from the Constitution and from the civil rights congressional legislation, especially those more lately passed by the House and the Senate, are still in the process of settling down. We have not arrived at the final disposition of policies and practices. They are still being made by ourselves and by the court. And in that regard, it seems to me that it becomes exceedingly important that an adherence, and a faithfulness, to implementing the rule of law be a very cornerstone of those qualities that we would be seeking in an Attorney General.

With regard to the Legal Services Corporation, in which, according to Mr. Meese, funding should be abolished despite congressional authority and authorization, and that the members of the Corporation be persons who themselves show little real genuine support for the Corporation, turns the legislative intent of the Congress upside down and on its head and raises, to me, serious questions about whether this nominee, if confirmed, would really be committed to implementing congressional mandates whether or not they are of his liking, whether or not they are of the choosing of the administration itself.

With reference to the voluntary school desegregation program in Seattle, I think we already have in your record a memo addressed to Mr. Meese that stated that the administration would support the State of Seattle, which was opposed to the plan, for "political reasons."

This position, I believe, is entirely inconsistent with legislative policy as enunciated in the Civil Rights Act of 1964 and in title 20 of the 1974 Educational Amendments, which explicitly state that the executive branch should aid, not impede all school desegregation efforts, particularly those that are voluntary.

The administration's position, supported, if not really developed by Mr. Meese, clearly impedes these voluntary efforts.

Title VII of the Civil Rights Act of 1964 empowers the executive branch, especially the Department of Justice, to vigorously enforce equal opportunity, using among its tools litigation authority. And yet in the affirmative action cases in New Orleans, and in Detroit Police Departments, where there was a vast minority under-representation in the local police departments, the administration opposed both of these, and Mr. Meese is on record as supporting both of those positions of the administration.

In the New Orleans incident, Mr. Meese was directly involved in the administration's forcing of the Equal Employment Opportunity Commission to withdraw a brief which it had filed on behalf of those minorities who were discriminated against. The administration's position in these two cases seems to me to be part of in deliberate disregard of the interpretations of title VII. Affirmative action, I submit, used as a remedy for correcting historically entrenched discrimination, has already been approved in more than 20 Federal court decisions.

Finally, of course, there is the matter that involves Mr. Meese in the very sorry circumstances surrounding the U.S. Commission on Civil Rights—the Nation's only civil rights agency charged with the responsibility for objective analysis and appraisal of the civil rights laws and policies Mr. Meese was clearly involved in the conduct that attempted to transform this independent agency into an instrument of Presidential policy.

The manipulation of the Civil Rights Commission was so contrary to congressional intent establishing that Commission in 1957 and reauthorizing it in subsequent years, that Congress itself took upon itself the authority to appoint half the Commissioners. The White House officials, including Mr. Meese, then undercut—I think, perhaps, sabotaged—a plan to ensure the Commission's continued independence by repudiating key features of an agreement reached among congressional leaders and the Civil Rights Commission, some of whom are on this distinguished committee.

Mr. Meese was the White House representative in this incident and was quoted as saying he would take drastic action if the Commission suggested legislative and policy changes inconsistent with the administration's civil rights philosophy. Soon after that, the Commission exercised what it saw as its prerogative, and was, of course, fired.

Now, these are the matters that I can put my finger on, Mr. Chairman and members of the committee, and identify that require me to come before you and raise the question of whether we can expect from Mr. Meese a sound respect for the rule of law and a vigorous enforcement of those civil rights matters.

So I would like to ask that if the committee shares this very focused concern that I would bring to you, that the nominee ought to be recalled back to this hearing to determine some very specific responses that, as far as I can tell—and I have not been privy to all of the matters under which he was interrogated—we should get on the record as clearly and as specifically as possible. Those matters that I refer to are matters which concern the school desegregation decisions, in which it seems to me, especially in the famous *Green* case—*Green* v. *Charlotte Meklenberg*—the question that needs to be clarified on the part of the nominee would turn on whether voluntary desegregation plans should be encouraged as was determined by the Court, or whether freedom of choice perogatives, which seem to be consistent with Meese's philosophy, would be given preeminence. That, to me, is a matter of such huge concern as we move toward a public school system that is still largely segregated. Notwithstanding our best efforts in the Congress and in many of the courts, we still face a very uphill battle, and it would be very important for this one member of the House Subcommittee on Criminal Justice to know where Mr. Meese stands when the Supreme Court said:

> All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. And so, transportation has been an integral part of the public education system for years. Desegregation plans cannot be limited to the walk-in schools.

So I need to be reassured that busing plans will not be scuttled out the back door under the prospective leadership of a new Attorney General.

The other matter that appears to be very, very critical in the same area is the whole question of whether we will refer to effect versus intent in school desegregation cases. In that matter, I would just like to suggest to you the Supreme Court language that it would seem to me to be appropriate to have the nominee respond to. This is in the Keyes and the school district of Denver, CO, in which the Supreme Court said in short:

> Common sense dictates the conclusion that racially-inspired school board actions have an impact beyond particular schools that are the subject of those actions. It is not to say, of course, that there can never be a case in which the geographical structure or, or the nature boundaries within a school district may have the effect of dividing the district into separate, identifiable, and unrelated units. Such a determination is essentially a question of fact to be resolved by the trial court in the first instance. But such cases must be rare.

That I need to know will be not only the law of the land, but will be the rule of law that the Attorney General chooses to adhere to and enforce as opposed to some new discussions that are floating about as to a refusal and disinclination to rely on the *Keyes* decision looking only to determine if there is an intent behind the segregative acts of school officials.

I cannot sit quietly by, even though the advise and consent responsibility is lodged in this body, and it requires that I come over to remind you that these are the concerns of the civil rights community which are incredibly important to us.

The last matter deals with the Fair Housing Act. I would like to know, again, whether the Fair Housing Act, title VII, will be construed so that we will be looking at the effects of discrimination or the intent of discrimination. The Attorney General's enforcement authority in this area is very large, and very important to all of us concerned. The Federal courts and Congress have repeatedly stated that a violation of the Act may be proven by showing either that an intentional act of discrimination has been committed, or that actions complained of have had a discriminatory effect. This so-called effects test is crucial to the vindication of civil rights in housing because of the infinite variety of subtle discriminatory techniques that have been developed over many years. As recently as 1980, during the consideration of the proposed Fair Housing Act amendments, the Senate and House judiciary committees both took note of the fact that the effects test is the law. Four Federal appeals courts have endorsed the same position. Every prior administration has conducted its fair housing litigation in a manner consistent with this understanding of the law.

And so, I come to you with a few items that I can bring to your attention in connection with the things that I think I can identify, and with other, very sensitive matters that would fall squarely within the purview of the Attorney General.

I appreciate you hearing my testimony, and I hope that Mr. Meese might be able to respond particularly to these matters before these confirmation hearings are completed. I thank you, Mr. Chairman, for allowing me to make this testimony.

[Whereupon, Senator Simpson assumed the Chair.]

Senator SIMPSON. Thank you very much, Congressman Conyers. I do remember that you and I have had some spirited discussions on various items in the past, and you do always speak your position very clearly, I assure you.

Mr. CONYERS. Well, our differences have never gone to any of these matters that are under discussion; I would like the record to very amply reflect that.

Senator **Simpson**. Indeed, and it already does reflect that.

I thank you very much, and as far as the return of the nominee, I think the Chairman will determine that, but you present us with some provocative things, and we appreciate it.

Senator Biden?

Senator **Biden**. I have one question, Congressman.

I share a dilemma similar to yours on this nominee. Senators Kennedy and Mathias and myself and others have questioned Mr. Meese, the nominee, fairly extensively on some of the items that you have raised—maybe not as extensively as might be required, but we thought we did.

Let us assume we get Mr. Meese back here. If Mr. Meese answers the questions on these issues in the way in which he answered them for me and others the first several days, it may very well put you and me and others in somewhat of a catch-22 position. Let me tell you why.

I asked Mr. Meese the following question. I said: "Mr. Meese, is there any civil rights law on the books that you can think of or that you know of, or is there any present interpretation of the civil rights law, that you as Attorney General would feel compelled to challenge or to change?

His answer was "No."

Now, assuming I did not know Mr. Meese's involvement in the past—and in all honesty, I do not know the degree of that involvement. He made a pretty strong case that he was not a very significant figure in the Reagan administration. But let us assume that I did not know him in the past—he was a very good witness. And I am not suggesting at all that he was lying. I am just saying he was a very good witness. There was almost nothing on the matter of civil rights that I could sit here and find myself in disagreement with as he stated what his positions would be as Attorney General.

Now, what happens, Congressman, if he comes back—and I suspect there may be several who will ask for him to come back, and I think it may be wise for him to come back; I had a meeting at the White House today on another matter, and it was suggested that if we were going to do that, we should do it expeditiously, and I, quite frankly, think that is the case; I do not think we should hold it up. If we want him back, we should get him back tomorrow, and get it up and out one way or another. But what happens if he comes back, and I go to the transcript tomorrow morning and ask all your questions, and he said, "I agree, I agree, I agree, I agree, I agree"?

How do you vote? Do you understand the point I am trying to make?

Mr. **Conyers**. Well, I think this is a great opportunity for me. I had not expected to advise those who are giving advice and consent.

Senator **Biden**. I am looking for advice. I am asking for it.

Mr. **Conyers**. This is beyond what I could have expected——

Senator **Biden**. But not beyond your capability.

Mr. **Conyers**. No. What I would like to suggest, of course—we have heard witnesses, and I am sure that Mr. Meese is quite a capable witness who is going to put the best face on all of his testimony, and I suggest that that has to be taken into account. But first of all, the first five incidents that I have raised, sir, are not hypothetical and do not change according to his candid admissions or denials one way or the other. If the record is correct—and I think the staff work on this great committee can document it in far more particulars than I can—I think that there is conduct that is already outstanding, statements that are already outstanding, which cast a reasonable question over whether he can fully live up to the oath that will be administered to him of whether he will adhere to the rule of law as determined by the U.S. Supreme Court and the Congress.

I do not know if that is going to just rise and fall on "Yes" or "No"——

Senator **Biden**. I understand what you are saying. And I will not keep you any longer, but let me give you specifics.

You and I worked very hard on the Civil Rights Commission compromise, with about 20 other people. The entire civil rights community was involved in that effort, and we thought we had an agreement. We thought we had one in detail.

You were nice enough to come over and meet in my office with others about the actual names—we went through and said so-and-so and so-and-so for this slot, this slot, and this slot. Now, to be very blunt about it, I really blamed it all on Mr. Meese when I read in the paper, right after we went out of session, when it was too late to do anything about it, that the President had welched on what I thought was the deal—what I knew was the deal. But what I did not know—and I had to honestly admit—I did not know what Meese agreed to. There were representations made to me about what Mr. Meese agreed to and did not agree to, based upon other Senators and other White House personnel saying, "We spoke to him in Tokyo, and he said such-and-such." To make a long story short, John, when he was before me under oath, I said, "Let me ask you very bluntly, Mr. Meese, did you in fact ever agree to specific nominees on the Civil Rights Commission, specific appointees?"

He said—and I paraphrase; I think it is close to a quote—but he said, "No one ever mentioned any names to me."

Now, the reason I raise that question is that I find myself in a dilemma, like I find myself in other instances relative to Mr. Meese. On the *Bob Jones* case, he said—and I cannot prove otherwise—that he, in fact, was not a party to that specific compromise that relates to names. With regard to *Bob Jones*, he said all he was doing was being a conduit, that he was the guy who passed the recommendations back and forth between the President and the policymakers.

Mr. **Conyers**. Well, it is because you are going to exercise the superior judgment that you have always done in examining not only witnesses, but nominees as well.

There is another part. The incidents I described to you, in response to your question, are the conduct that seems to be on the record. It seems to me that these can be examined. It is either there or it is not; it is satisfactory or not. But when I mention the *Green* case and talk about voluntary desegregation versus a doctrine of freedom of choice in school desegregation cases, I am not sure if anybody has pulled out that Supreme Court decision and laid it before the nominee. I had not heard that that happened over here.

Senator BIDEN. No; I am not suggesting that everything you raise, we raised. I was asking the question.

Mr. CONYERS. Well, that, sir, brings into question a direction that it looks like we are already moving down the road on. When I talk about *Keyes* and the effect versus intent test, it looks like there are rumblings going on in the Department of Justice that already suggest that these laws may not be adhered to.

When I talk about the effect versus intent test in fair housing, it seems that some have already said that we no longer need adhere to them. So that these are not "Yes" and "No" answers, which need to be put in the record once and for all. I think this is very important particularly if they are subsequently violated, we will be able to come back here not to say, "Well, we asked an omnibus question, was he for upholding all the civil rights laws on the books, and he said 'Yes' and we thought that he would go along with fair housing, with the *Keyes* case, *Swann* case, *Green* case, all of which are the law of the land now."

Senator BIDEN. You make a valid point. Thank you very much.

Senator SIMPSON. I thank you very much. I think that within the scope of the hearings, many, many questions have been asked in this record. Senator Metzenbaum was particularly vigorous, as he can be, and thorough and incisive, and I really think that about everything has been covered—and, knowing Howard as I have come to, I can assure you that it has been covered.

So I would say this to the minority. I think if you do wish—and Congressman Conyers has suggested it—the return of the nominee, that that be done today. He can be available today, on very short notice, if that is the wish of the minority, and we will certainly assure that he is here. But I know the chairman is anxious to conclude these hearings.

Mr. CONYERS. Well, I am too, sir. This is not made in any attempt to prolong this matter.

Senator SIMPSON. No, no, I understand that. I will leave that to the minority members, through the ranking minority member. If that is the case, the chairman has indicated he will remain here late into the night, and we can do that, if you feel that is necessary.

Senator BIDEN. We may be able to work that out. As the chairman knows, and he always stands by the rules of the committee, his expeditious effort to expedite the nomination on Thursday, I can almost assure him, is not going to come to fruition, but that we will be able to do that by the next executive committee meeting. But at any rate, that may be useful to do today, and maybe I should poll my membership on whether or not they are prepared to go today.

Mr. CONYERS. Thank you very much.

I think the character of these questions in terms of whether the Supreme Court law will be enforced really go much, much deeper than whether you are for civil rights laws or whether you think that you will not violate any——

Senator **Biden**. Well, we did go deeper than that, John, but you have raised some additional points, and I think they are valid. We will see what we can do.

Mr. **Conyers**. I thank you very much.

Senator **Simpson**. Thank you, Congressman Conyers. I do enjoy working with you, and it is good to see you, sir.

Let me say—and I express this for the chairman—that, while having nothing to do with the actual vote on the nomination, but the chairman intends to close these hearings today. And so I say to you that even though there may be delay on Thursday or whatever, through the machinations of how we do this committee work, I want you to be aware, without any sneaky shot off the hip——

Senator **Biden**. Well, maybe I should suggest that the chairman maybe reconsider that, because I think we are moving along very rapidly, and if there is a need to have the witness tomorrow morning, I do not think that is a big problem. The chairman has always been cooperative.

I have no objection to closing the hearing today, assuming that my colleagues do not want to question Mr. Meese again, but we can work that out. We have always been able to, and Duke, the staff sitting on your left, knows how we always cooperate, and we would not want to delay this hearing for weeks and weeks and weeks.

So I am sure we can work something out.

Senator **Simpson**. Thank you very much, Senator.

Panel 4, so designated, will please come forward. That consists of Howard Phillips, chairman of the Conservative Caucus, Inc., of Los Angeles; Roger Conner, executive director of the Federation for American Immigration Reform, Washington, DC; Norman Darwick, executive director, International Association of Chiefs of Police, Inc., Gaithersburg, MD; Jack Clayton, Christian Legal Defense and Educational Fund, Washington, DC; Sharleen Maldonado-Cross, chairman, Chicana Forum, Washington, DC, and John J. Norton, chief, California State Police, California Law Enforcement Organization.

I see that we have some panel members who are not present, obviously; apparently, because of the delay in the hearings, many of those could not appear.

If you would stand and be sworn, please, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. **Darwick**. I do.

Ms. **Maldonado-Cross**. I do.

Mr. **Clayton**. I do.

Senator **Simpson**. If you would identify yourselves for the record, please, and proceed.

STATEMENT OF A PANEL, INCLUDING NORMAN DARWICK, EXECUTIVE DIRECTOR, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., GAITHERSBURG, MD; SHARLEEN MALDONADO, CHAIRMAN, CHICANA FORUM, WASHINGTON, DC, AND JACK CLAYTON, WASHINGTON CONSULTANT, CHRISTIAN LEGAL DEFENSE AND EDUCATION FOUNDATION

Mr. DARWICK. Mr. Chairman, I am representing the International Association of Chiefs of Police and today, I am substituting for Howard Runyon, who is the president of our association, and he is also the police chief in Passaic Township, NJ.

The IACP is a professional organization established in 1893. It has a membership of nearly 14,000, comprised of chiefs of police and other law enforcement personnel from all sections of the United States and more than 60 other nations.

Throughout its existence, the IACP has tried to achieve proper, conscientious, and resolute law enforcement.

I appear before you today to voice not only my opinion, but the views of the vast majority of the association's members as well as the vast majority of the law enforcement community. On behalf of the association membership, I would like to express our sincere appreciation for providing us the opportunity to appear before the committee to offer our unqualified endorsement for Edwin Meese III for the position of U.S. attorney general. We believe that his proven dedication to law enforcement and to the improvement of our justice system uniquely qualifies Mr. Meese to assume the duties of that office. There is no need for me to quote statistics to you on the severity of the crime problem in this Nation. Since the 98th Congress has reconvened, the Senate has concerned itself almost exclusively with legislation designed to combat crime.

We ali understand the importance of appointing an Attorney General who will work effectively with the law enforcement community to bring an end to the constant fear of being victimized. And this is a fear which is shared by many of our citizens. Edwin Meese will be such an Attorney General. He has demonstrated a commitment to law enforcement not only on the national level, but also on the State and local levels. This is evidenced by his support of such efforts as the development of a training program for State and local law enforcement officials at the Federal Law Enforcement Training Center at Glynco, GA

Partly because of Mr. Meese's work, State and local law enforcement officers are now receiving training in such areas as explosives, arson, and other criminal investigative techniques which are not readily available at the State and local levels and in which the Federal Government has particular expertise and facilities.

Mr. Meese has vigorously pursued ways to crack down on organized crime and drug trafficking and was one of the architects of the President's Commission on Organized Crime and the nationwide drug task force network.

What is particularly impressive about Mr. Meese is that since he has been at the White House, he has been accessible to law enforcement. He has gone out of his way to listen to our views and to share with us his ideas. Mr. Meese addressed our general membership on critical issues last year.

Before coming to Washington, Mr. Meese devoted himself to service which has prepared him to take over as this Nation's chief law enforcement officer. He has played an active role in the passage of beneficial criminal justice legislation since he first joined the district attorney's office in Alameda County, CA, 25 years ago. At that time, he served on the law and legislation committee for the California Peace Officers' Association. Later, he served as an assistant to then Governor Reagan, and he made certain that the law enforcement voice was heard at the highest levels of the State government, just as he now does at the Federal Government level.

I am certain that Mr. Meese will continue to keep the lines of communication readily available to law enforcement in his new position as Attorney General. State and local law enforcement needs the dynamic leadership and counsel that will emanate from the Office of Attorney General under Edwin Meese III.

Thank you very much.

Senator SIMPSON. Thank you very much, Mr. Darwick.

Now, please, Sharleen Maldonado. And would you, just for my own information, explain your definitions of "chicano" and "chicana"?

Ms. MALDONADO. Well, by changing the last "a" in "chicana" to "chicano," you have performed a miracle in a matter of gender, "a" representing female, and "o" representing male. Chicana Forum focuses on the women of Mexican-American heritage, a women's alliance for economic development.

Senator SIMPSON. Well, after 3 years on immigration reform, I need all the help I can get on every tidbit of information, and that is very interesting. Thank you very much.

Would you please proceed, if you will?

Ms. MALDONADO. Yes, thank you.

Chicana Forum is a regional advocacy group which is very supportive of Ed Meese for Attorney General. The reason we are headquartered in Washington is because we have felt the brunt of northeastern regional bias for many, many decades. We consider the Mexican-American issue to be that of increasingly significant regional consequence.

Since we needed to have some type of thinking and representation, during International Women's Year, we formed the Chicana Forum. Chicana Forum seeks no Federal grants. It does not want the hassle in dealing with other minority groups which have a vicious rivalry in Federal grantsmanship. We funded ourselves totally. But we are a recognized body, and we have testified before, and our IRS status is all intact.

We like to talk about Mex-America. That is the regional area of the Southwest that is closest to Mexico with which Mr. Meese is very familiar. That is our term, "Mex-America." Mex-America, the four border States which look to Mexico as their mother country recognizing generations of Mexican cultural influence.

There are many misconceptions about what is the Mexican-American community. First of all, we are not comfortable when termed Hispanics. There really is much diversity within the Hispanic community. You have had groups here, speaking before this committee, that say they represent the categorical Hispanic voice. Well, what is the Hispanic voice? LULAC says one thing at the national office, says another thing in the Southeast, another thing in Texas, and another thing in California. We all know that organizational threads have such a diversity, but I think in the Hispanic community, as termed politically here in Washington, that diversity is underrepresented and leads to too many misconceptions. There are Mexican Americans who resent their opinions being stereotyped against the confirmation of Mr. Meese.

The Mexican-American community of the Southwest is a land ownership community. We voted 5 to 1 in favor of proposition 13 in California—a very, very heavy civil rights issue, heavily lobbied by the civil rights community. Proposition 13 had to do with property taxes, and yet we voted 5 to 1 in favor of it. That was double the non-Hispanic vote, and it was the largest turnout we have ever had in the Mexican-American community for the vote perhaps because we object to high taxes, Federal and State waste, and loss of property value.

Now, that has to tell you something. It might explain why we are against quotas. The majority of Mexican Americans find that quotas and special civil rights programs set up a professionalism for professional minorities called equal opportunity specialists, who vie only against each other for dead end jobs. Quotas set up a grantsmanship rivalry, where you have to have social welfare skills and what we term "poverty points" in order to surface. It sets up minority enterprise, which means you have a constant ceiling, which means fights with the blacks, with the Asians, and with whatever other group enters the picture, for a piece of the pie, never having access to the total, convinced you are so lucky to have a crumb to share.

We are against busing. Busing—it fails our neighborhoods; it works against our family structure. As a teacher of handicapped students in the heart of East Los Angeles, I saw the damage that busing could and did do. It is critical to the Mexican-American family that they maintain their neighborhood schools and that their ethnic solidarity not be termed "discrimination," but be viewed as a strength.

The voting rights failure—the Joint Center on Policy has even issued a study which shows that there has been very little impact in terms of the Voting Rights Act, in terms of benefits for the Mexican-American community.

Now, I would like to point out here, in terms of the Voting Rights Act, there is a media-cized coalition, and that this coalition puts Chicanos, blacks, gays, and radical feminists, who constantly and erringly attack the concept of machismo, into a political coalition, so that our right to exercise our vote looks like we have to vote along the movement. Too many are intimidated, and as a consequence, refrain from participating in that process.

Then there is the immigration issue. Well, just what is the immigration issue? I am sorry, but Chicana Forum agrees with the administration's policy. The immigration problem at the border is critical because it is impacting the housing in our neighborhoods. It is making us feel guilty if we do not try and work against the law by backing the illegals, and it is victimizing us in terms of crime because of the marginal elements that are crossing the border. Mr.

Meese has shown his willingness to work with local enforcement problems and to secure our neighborhoods.

Community security, I am so glad to see that there are so many supporters of Mr. Meese that are concerned about community security because, like everyone, Mexican-Americans want secure neighborhoods. They want capacity building locally; they want to feel safe, and they want crime kept wrong.

I would like to terminate now. I see the red light.

Senator SIMPSON. Thank you very much, Ms. Maldonado.

Next is Mr. Jack Clayton.

Mr. CLAYTON. Thank you, Mr. Chairman. For the purpose of brevity, I would like to condense portions of my testimony and ask that it all be entered into the record.

Senator SIMPSON. Without objection, it is so ordered.

Mr. CLAYTON. Thank you, Mr. Chairman. I appreciate the opportunity of testifying before this committee. My name is Jack Clayton. I serve as Washington consultant for the Christian Legal Defense and Education Foundation.

Our primary interest is to educate others on matters of religious freedom and civil liberties, and to provide various forms of assistance to Christians and others who have suffered from violation of their civil rights.

We are deeply committed to the restoration and preservation of the most precious freedoms that were dearly purchased by our Christian forefathers, but are increasingly under attack today.

Our supporters include members of the Ketocton Association of Regular Baptists. Almost 200 years ago, Ketocton Association member and Baptist preacher, John Leland, persuaded a reluctant James Madison to add a bill of rights to the Constitution.

Other Baptist preachers won the support of Thomas Jefferson, George Mason, Patrick Henry, and George Washington, who praised the Baptists as being firm friends of civil liberty.

Our interest in the nomination of Mr. Edwin Meese for Attorney General arises in part from the concern that the shrill vehemence of some in the coalition of his adversaries suggests that the arguments against him are not calculated to confuse.

It is perhaps not remiss to ask whether opposition to him stems from his qualifications or from his ideology. If the latter is true, one should also ask whether his opponents are not, in fact, expressing mere ideological disagreement which was well known before the present administration took office.

Our greater concern is that the caustic attacks on Mr. Meese will obscure the need for very serious discussion on the direction of the rule of law, of constitutional government, of civil rights, the protection of life, liberty and property—indeed, the very fiber which holds us together as a nation.

It is true that some of the organizations that have been most strident in their opposition to his nomination are some of the most aggressive in promoting the erosion of civil rights in the name of protecting them.

These organizations would hasten the demise of representative government as they continue to gain implementation of their radical agenda through an unconstitutional judicial elite that recognizes no limits on its supremacy.

These people view the Federal judiciary as their private preserve; the judiciary is their institution to bypass the legislative and amendatory processes that are required by the Constitution. This unconstitutional judicial bypass of congressional legislative power must be jealously guarded, in their view, because the Congress would never enact the radical agenda that can be handed to these organizations by outright judicial fiat.

Accordingly, Mr. Meese's opponents insist that the office of Attorney General also be used as a tool for aiding their own radical agenda, and that the office not even be allowed to question the present runaway judicial activism that is destroying civil rights protected in the Constitution.

Indeed, the Federal judiciary has become a super legislature. Montesquieu warned that the legislative power must never be joined with the judicial power. But it has happened; his warning has come true and the Federal judge today has become not only a Federal judge, but the legislator and the executive, and has demonstrated a great deal of oppression that has torn us apart socially.

Francis Schaeffer, the eminent Christian scholar, wrote that, "the law, and especially the courts, is the vehicle to force this total humanistic way of thinking upon the entire population." This is not to be taken lightly.

Coming from the opposite end of the political spectrum, Michael Rebell wrote in the spring 1982 issue of Social Policy that, "the critical value concepts with which our society now wrestles are those articulated by the courts, and not by the church and the legislature."

So the Federal judiciary is not only a super legislature, it has become a super church, mandating the "thou shalt nots" and the "thou shalts" in today's society. The church and state are one.

Now, this is not mere hyperbole. Writing in the American Bar Association Journal, Chief Justice Irving Kaufman of the Second Circuit Court of Appeals endorses and approves of Princeton Prof. Walter Murphy's observation that, "the court's power is not temporal. It rests on the "cult of the robe," the concept of judge as high priest of social justice with talents for elucidation of the law."

I see that my time has run out, but I would like to point out that the present judiciary does not even pretend to follow the Constitution. They follow unconstitutional philosophies, known as positivism, judicial realism and sociological jurisprudence, and their oath of office means nothing because they immediately discard the Constitution and adopt and embrace and utilize these unconstitutional judicial philosophies.

I think that should be the focus of hearings. Mr. Meese has indicated that he will support all written statutes, and even the judicial legislation that came about, and I urge his confirmation and my organization supports it.

Senator SIMPSON. Thank you very much, Mr. Clayton. I think Senator Biden may have a question.

[Prepared statement follows:]

CHRISTIAN LEGAL DEFENSE
& Education Foundation, Inc.

TESTIMONY OF

JACK CLAYTON

> Hatred of Walpole was almost the only feeling which was common to them. On this one point, therefore, they concentrated their whole strength. With gross ignorance, or gross dishonesty, they represented the Minister as the main grievance of the state. His dismissal, his punishment, would prove the certain cure for all the evils which the nation suffered.
>
> Thomas Babington Macaulay

My name is Jack Clayton. I serve as Washington Consultant for the Christian Legal Defense and Education Foundation. Our primary interest is to educate others on matters of religious freedom and civil liberties and to provide various forms of assistance to Christians and others who have suffered from violations of their civil rights.

We are deeply committed to the restoration and preservation of the most precious freedoms that were dearly purchased by our Christian forefathers, but are increasingly under attack today. Our supporters include members of the Ketocton Association of Regular Baptists. Almost two hundred years ago Ketocton Association member and Baptist preacher John Leland persuaded a reluctant James Madison to add the Bill of Rights to the Constitution.

Untold suffering and struggle of other Baptist preachers won the support of Thomas Jefferson, George Mason, Patrick Henry and George Washington. Washington praised the Baptists as "firm friends of civil liberty." Other religious denominations came to support the principles for which they fought.

Our interest in the nomination of Mr. Edwin Meese for attorney general arises in part from the concern that the shrill vehemence of some in the coalition of his adversaries suggests that arguments against him are not calculated to enlighten but to confuse.

It is not remiss to ask whether opposition to him stems from his qualifications or from his ideology. If the latter is true, one should also ask whether his opponents are not, in fact, expressing mere ideological disagreement which was well-known before the present administration took office.

Our greater concern is that caustic and demagogic attacks on Mr. Meese will obscure the need for very serious discussion on the direction of the rule of law, of constitutional government, of civil rights, of the protection of life, liberty and property, and indeed, of the very fiber which holds us together as a nation.

It is true that some of the organizations that are most strident in their opposition to his nomination have also been the most aggressive in promoting the erosion of civil rights in the name of protecting them. These organizations would hasten the demise of representative government as they continue to gain implementation of their radical agenda through an unconstitutional judicial elite that recognizes no limits to its supremacy. These people view the federal judiciary as their private preserve. The judiciary is their institution to bypass the legislative and amendatory processes that are required by the Constitution. This unconstitutional judicial bypass of Congressional legislative power must be jealously guarded because the Congress would never enact the radical agenda that can be handed to these organizations by outright judicial fiat.

Accordingly, Mr. Meese's opponents insist that the office of Attorney General also be used as a tool for aiding their own radical agenda, and that the office not even be allowed to question the present runaway judicial activism that is destroying our civil rights provided in the Constitution. Indeed, the federal judiciary has become a superlegislature as well as a superexecutive branch. Montesquieu warned:

> "Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

This warning has become frightfully prophetic. The federal judge today has become the legislator and the executive, and with oppression and fury he has laid waste to life, liberty, and property.

We are struck with awe when we contemplate the ravages and suffering caused by crime, drugs, abortion, pornography, broken homes, school violence, homosexuality, declining academic standards, judicial attacks on churches and religious freedom, and establishment of Humanism as a mandatory state religion. Much, though certainly not all of the blame for this social devastation must be laid squarely on the federal courts.

Francis Schaeffer wrote in A Christian Manifesto that:

> The law, and especially the courts, is the vehicle to force this total humanistic way of thinking upon the entire population.

Schaeffer's emphasis of the reality of judicial force to change religious thinking will be rejected only by the most foolhardy.

Coming from the opposite end of the philosophical spectrum, Michael Rebell wrote approvingly in the spring 1982 issue of Social Policy that:

> . . . . the critical value concepts with which our society now wrestles are those articulated by the courts, and not by the Church and the legislature.

The federal judiciary, therefore, has become not only the superlegislature and superexecutive branch, it has become the SUPERCHURCH!!! The judiciary then can only be truly understood as a religious institution. Religious imperatives, the "thou shalt's" and the "thou shalt not's," are no longer authoritatively asserted by the church, but by the judicial superchurch which is also the superlegislature. The church and the state are one. The state itself becomes a god and all other gods are held to be inferior.

This is not hyperbole. Writing in the American Bar Association Journal Chief Judge Irving Kaufman of the Second Circuit Court of Appeals, endorses Princeton Professor Walter Murphy's observation that:

> . . . the Court's power is not temporal. It rests on the "cult of the robe," the concept of the judge as high priest of justice with talents for elucidation of the law, that sacred and mysterious text that is inscrutable even to the educated layman . . .

This concept of humanistic judge-priest is as repulsive as it is unconstitutional. Federal judges are sworn to uphold the Constitution, but they cast this oath aside and follow unconstitutional judicial philosophies such as positivism, judicial realism and sociological jurisprudence. As Chief Justice Charles Evans Hughes said, "The Constitution is what the judges say it is." Hughes told Justice William O. Douglas that court decisions are "ninety per cent emotional." Douglas concluded that decisions are a "gut" reaction. This disgraceful philosophy causes one to wonder if a judge's gut reaction is any better than the ancient pagan priests who read chicken entrails.

The law is in chaos. In a civilized nation the law should be known, or at least, knowable. Under our present humanistic judge-priest government the law is neither. Justice William Rehnquist has warned that unless Congress acts to halt judicial supremacy, we risk a crisis as great as the Great Depression or even the Civil War.

Mr. Meese's detractors would hasten us to that crisis. The social chaos that has resulted from their philosophy should be reversed, not furthered.

There is no evidence that Mr. Meese will not fully enforce all written statutes and even the "judicial legislation" in the form of court decisions which have absolutely no basis in written statute or the Constitution. Yet, his opponents are not content with this, they want him to be an activist of their own and further their goals.

It should be pointed out that some activist attorneys, when suing the federal government, want a cooperative defendant in order that they can more easily win their cases. In very recent history some of this litigation has become blatnatly colusive, and we have witnessed the rise of many "sweetheart suits" in which both parties mutually sought the same outcome.

A particularly notorious "sweetheart suit" was the case of Green v. Regan in which the Carter administration deliberately lost its case because of ideological congeniality with the people suing the administration. Massive violations of civil rights of parties not even in the litigation will follow because of the corrupt sweetheart suit in which the Justice Department and federal judges were guilty of blatant misconduct.

Mr. Meese's enemies desire a sweetheart attorney general. This desire should not be granted.

I should point out that despite the foregoing comments, there are substantial philosophical differences that my organization has with Mr. Meese. We feel that no civil rights are secure until the Justice Department vigorously and publicly denounces the unconstitutional philosophies of positivism, judicial realism and sociological jurisprudence. The widespread misconduct of federal judges must be strongly attacked. There is no indication that Mr. Meese has seriously considered doing either.

Mr. Meese is attacked by the wrong people for wrong reasons to cause the wrong effect on the civil rights of religious minorities. Although his confirmation will not signal a reversal of the violations of the civil rights of Christians by government and especially the courts, his rejection would signal an increase in these violations, and it would be a victory for the most malicious enemies of civil rights of Christians.

We urge that Mr. Meese be confirmed.

Senator BIDEN. If I may, Mr. Darwick, what are the most important issues that the International Chiefs of Police believe we in the Federal Government should be focusing on, and what are the things that this administration and Congress can do to best help you, the local chiefs of police, if you had to say top priority?

Mr. DARWICK. I think the top priority in this country is crime in the streets; it is a national disgrace. The drug problem is a critical issue confronting all levels of law enforcement—Federal, State, county, and local law enforcement.

Senator BIDEN. Do you all support our efforts to try to increase the funding for assistance funds for local and State law enforcement agencies?

Mr. DARWICK. Yes; we do.

Senator BIDEN. You and your organization have been incredibly helpful to me and others on this committee regarding what is characterized by some as some of the more controversial legislation I have attempted and we have successfully passed out of this committee.

One of those areas that I would like to ask your opinion on—and if you are not prepared at this point to answer it, I would like you to do so for the record is the so-called drug czar bill that you gave me some help on 2 years ago, and that the President vetoed.

Now, I think we have worked out a pretty good compromise. I am told indirectly that the administration is ready to sign on to a proposal where we will have, at a Cabinet level, the Attorney General having authority regarding drugs similar to that of the Director of Central Intelligence as regarding intelligence matters.

In this case, the Attorney General would be in the position to marshal resources and set priorities for the drug problem that are beyond his immediate departmental responsibility.

First of all, do you think that kind of approach, if you do not know the specifics, makes sense? And, second, if you have had a chance, what do you think about that specific proposal?

Mr. DARWICK. Well, Mr. Biden, you have been particularly helpful to us, also, and we appreciate your efforts on behalf of law enforcement. We have had an opportunity to review the current proposal that relates to the drug czar.

Our legal staff is still looking at the proposal and they are still talking to the people that have the responsibility—the Drug Enforcement Administration and customs officials. I think we are ready to support the legislation. I will give you a more positive answer shortly, and I will do that in writing.

Senator BIDEN. Fine.

Mr. DARWICK. But we have looked carefully at it and we think that the compromises that have been made are such that it is a good proposal.

Senator BIDEN. That is helpful, and I will only hold you up one more minute, if I may. We strangely enough have an argument that sometimes erupts in this committee where we try to give the Justice Department and the law enforcement agencies more money.

They argue that budgetary constraints prevent them from being able to be the beneficiaries of our largesse. Do you think that we are expending and directing enough resources at a Federal level on the issue of dealing with the problem you outlined as the most important problem facing us?

Mr. DARWICK. Of course, the answer is no.

Senator BIDEN. Lastly, Senator Thurmond and Senator Grassley and I have been trying to work out a matter relating to the Torts Claims Act. And as you will recall, that issue relates to whether or not police officers and other governmental agents, non-police-oriented as well as police-oriented, should have immunity for what, in fact, are constitutional violations if there is a good faith mistake made.

Case in point: you get a warrant to go to 2101 Maple Street and you show up at 2101 and, lo and behold, you are wrong; it was 3101. And in the process, because of resistance, you do damage. The constitutional rights of the person in there, who is totally innocent, are violated and you police officers are on the spot.

Our dilemma, quite frankly, is twofold, and again you may want to respond to this because it does affect what Mr. Meese's views are on some of these things, and that is that some of us—me, particularly—believe that we should get about the business of dealing with the police immunity and worry about the disputes we have with the rest of the Government officials later in other words, should we give police the good faith exception now? We are also expanding the liability of the Government, since we are now saying that you, the police officers, are no longer liable if you can show good faith. But the actual damage is suffered by the individual for the violation of constitutional rights; someone should be responsible for it.

My question to you is, Do you have any objection to the notion of law enforcement officers being pulled out and dealt with, and then deal with the rest, or would you rather it all stay in one package?

Mr. DARWICK. Not if you deal with us first.

Senator BIDEN. I think that is a fair enough answer.

I have possibly one more question, if I may.

Senator SIMPSON. You said that last time.

Senator BIDEN. That was of this witness. We have another witness.

Senator SIMPSON. I see, OK.

Senator BIDEN. In the interest of time and comity and good faith and cooperation——

Senator SIMPSON. All those things we talk about.

Senator BIDEN. I will withhold my questions. With your permission, Mr. Chairman, I have several questions for each of the remaining two members of the panel and I would like to submit them in writing. So, by the time the record is closed, maybe they could respond, so I will not hold them much longer either. I realize the hour is late.

Senator SIMPSON. Thank you very much, Senator Biden.

Senator BIDEN. Thank you.

Senator SIMPSON. I appreciate that, Joe.

Thank you so much for your testimony, all of you.

The next panel then, please: John Shattuck, director of the American Civil Liberties Union, Washington; Agnes M. Foley of Philadelphia; and Leo Scanlon of the National Democratic Policy Committee of Washington, DC.

It is nice to have you, if you would stand and be sworn. Do you promise to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. SHATTUCK. I do.

Mr. SCANLON. I do.

Ms. SPENCE. I do.

Senator SIMPSON. If you would just identify yourselves for the record, please?

Mr. SHATTUCK. Mr. Chairman, I am John Shattuck, the national legislative director of the American Civil Liberties Union, and I am accompanied by Muriel Morisey Spence, legislative counsel to the American Civil Liberties Union, and a cosubmitter of the statement that we have prepared for the committee.

Senator SIMPSON. Nice to see you.

Mr. SCANLON. I am Leo Scanlon. I am the Washington, DC representative of the National Democratic Policy Committee.

Senator SIMPSON. Please, John, if you would proceed, we appreciate having your testimony.

STATEMENT OF A PANEL CONSISTING OF JOHN SHATTUCK, NATIONAL LEGISLATIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION, ACCOMPANIED BY MURIEL MORISEY SPENCE, LEGISLATIVE COUNSEL; AND LEO SCANLON, REPRESENTING THE NATIONAL DEMOCRATIC POLICY COMMITTEE

Mr. SHATTUCK. Thank you very much, Mr. Chairman. I would like to observe for the record that we have submitted a lengthy statement which we will not burden the committee with in any detail, but we consider it to be the extremely fruitful work of Ms. Spence, who is with me today. And, as I said, our statement is a joint one.

We are pleased to appear on behalf of the American Civil Liberties Union to offer our views on issues of central importance to these nomination confirmation hearings.

The ACLU is a nationwide, nonpartisan organization of 250,000 members devoted exclusively to the defense of rights guaranteed by our Constitution. We do not, and never have, taken positions endorsing or opposing candidates for elective or appointive office, nor do we do so—and I stress that very much at the outset, Mr. Chairman—in the case of the nomination of Mr. Meese.

Our purpose in appearing before the committee is to direct the Senate's attention to a crisis facing the next Attorney General, whoever he or she may be; in this instance, whether it is Mr. Meese or someone else. That crisis involves the enforcement of our civil rights laws.

American civil rights law is one of the proudest accomplishments, I think we would all agree, of our political system. It represents a 30-year bipartisan consensus reflected in scores of congressional statutes and thousands of court decisions.

The law has three essential elements. First, all Americans have enforceable rights to be free from discrimination on the basis of race, sex, religion, national origin, or handicap, and these rights cannot be taken away by executive action.

Second, the courts have principal responsibility for remedying the abridgement of a person's civil rights. And, third, the Federal Government has a special responsibility to enforce civil rights law vigorously and fairly and equitably throughout the land.

In our view, Mr. Chairman, and based on substantial review of court materials and public record documents that have been submitted by the Department of Justice over the last 3 years, we believe that this Department, and specifically the officers who are charged with carrying out the responsibility of the Department, have not followed these fundamental elements of civil rights law.

The Attorney General is our Nation's top law enforcement officer. His job is to enforce the laws evenhandedly and not to try to change them or interpret them to his own liking or the liking of his superior, granting that, of course, there are areas of prosecutorial discretion which are quite appropriate and that all attorneys general exercise.

For the past 3 years, the Department of Justice and White House officials have engaged in a wide variety of actions that we think hold civil rights law substantially as lower and less effective than it should be, than the Congress intended it to be, and that the courts intended it to be when they have enunciated those principles.

These actions are described in detail in the appendix to our testimony, and I would just like to summarize the principal elements of them. They include aiding defendants accused of subjecting institutionalized persons to abusive and inhumane conditions; attempting to authorize the granting of tax exemptions to private schools which practice racial discrimination, despite clear legislative and judicial policy to the contrary in terms of administrative, bipartisan action in that area; abandoning the use of an important legal principle that has been crucial to effective enforcement of the laws against housing discrimination; impeding the efforts of black parents to participate in specific school desegregation lawsuits initiated in their behalf when they have sought to intervene in those cases; attacking voluntary efforts to end segregation in schools that have been initiated and conducted at the local level, despite clear congressional endorsement of such voluntary measures; opposing voluntary plans to end the effects of employment discrimination, even though substantial judicial authority has endorsed similar plans; announcing that school districts' desegregation plans would receive Justice Department approval even if they failed to end segregation, thus, in effect, endorsing the long repudiated policy of separate but equal; publicly repudiating and refusing to comply with the requirement that each Federal agency develop goals for the hiring of minorities and women; urging Federal courts to interpret the Voting Rights Act in a manner inconsistent with the intent of Congress; recommending significant cuts in the resources of civil rights enforcement agencies; and recommending the termination of funds for programs designed to foster educational opportunities for minorities and women.

Mr. Chairman, these areas that are covered in substantial detail in the appendix to our report are all extremely important to the next Attorney General, and there are specific questions that arise from the conduct and the enforcement of our civil rights laws over the last 3 years which we think the next Attorney General must address.

Some of those questions have been addressed during the course of this hearing. I think the chairman is quite right to point that out; others have not.

We take no position on the nomination of Mr. Meese or any other person for high Federal office. But we submit that during these hearings, it is appropriate to determine what is the view of Mr. Meese on the actions that we have outlined that are not hypothetical, that are specific instances that are documented in court and other public records. And what is his view of the role of the Attorney General enforcing the Nation's civil rights laws?

We would be happy to respond to any questions and are delighted to appear before you, as always, Mr. Chairman, and Senator Biden.

Senator SIMPSON. You have always been very effective in your testimony. I appreciated it very much during the long number of hearings with immigration matters; very thoughtful always.

[Prepared statement follows:]

STATEMENT OF

JOHN SHATTUCK
NATIONAL LEGISLATIVE DIRECTOR

and

MURIEL MORISEY SPENCE
LEGISLATIVE COUNSEL

AMERICAN CIVIL LIBERTIES UNION

Mr. Chairman and Members of the Committee:

We are pleased to appear on behalf of the American Civil Liberties Union to offer our views on issues of central importance to the nomination of Edwin Meese III to be Attorney General of the United States. The ACLU is a nationwide non-partisan organization of more than 250,000 members devoted exclusively to the defense of rights guaranteed by our Constitution. The ACLU does not take positions endorsing or opposing candidates for elective or appointive office, nor do we do so on the nomination of Mr. Meese.

Our purpose in appearing before the Committee is to direct the Senate's attention to a crisis of great magnitude concerning the administration and enforcement of the civil rights laws of the United States by the Department of Justice--a crisis facing the next Attorney General and one which must be addressed in detail by Mr. Meese in these confirmation proceedings so that his qualifications to perform that office can be fully judged.

American civil rights law is one of the proudest accomplishments of our political system. It represents a thirty-year bipartisan consensus reflected in scores of congressional statutes and thousands of court decisions. The law has three essential elements: first, all Americans have enforceable rights to be free from discrimination on the basis of race, sex, religion, national origin or handicap, and these rights cannot be taken away by executive action; second, the courts have principal responsibility for remedying the abridgement of a person's civil rights; and third, the federal government has a special responsibility to enforce civil rights law vigorously and fairly throughout the land.

The current Justice Department has repudiated each of these fundamental elements of civil rights law. It has done so at the direction or with the concurrence of the White House, and it has been widely reported that Mr. Meese has played a major role in many of the Administration's actions in this area. The Attorney General is our nation's top law enforcement officer. His job is to enforce the laws evenhandedly, not to try to change them or interpret them to his own liking, or the liking of his superior. But in the area of civil rights law enforcement that is precisely what this administration has been doing for the last three years, and its actions are breeding disrespect for the law and threatening to plunge our nation back into historic patterns of race and sex discrimination.

For the past three years Department of Justice and White House officials have engaged in a wide variety of actions that can only be seen as contemptuous of civil rights law. These actions are described in detail in the appendix to our testimony. They include:

*Aiding defendants accused of subjecting institutionalized persons to abusive and inhumane conditions;

*Attempting to authorize the granting of tax exemptions to private schools which practice racial discrimination, despite clear legislative policy to the contrary;

*Abandoning the use of an important legal principle that has been crucial to effective enforcement of the laws against housing discrimination;

*Impeding the efforts of black parents to participate in school desegregation lawsuits initiated in their behalf;

*Attacking voluntary efforts to end segregation in schools despite clear congressional endorsement of such voluntary measures;

*Opposing voluntary plans to end the effects of employment discrimination even though substantial judicial authority has endorsed similar plans;

*Announcing that school districts' "desegregation" plans would receive Justice Department approval even if they failed to end segregation--thus endorsing the long repudiated policy of "separate but equal:"

*Publicly repudiating and refusing to comply with a requirement that each federal agency develop goals for the hiring of minorities and women;

*Urging federal courts to interpret the Voting Rights Act in a manner clearly inconsistent with the intent of Congress;

- *Recommending significant cuts in the resources of civil rights enforcement agencies; and
- *Recommending the termination of funds for programs designed to foster educational opportunities for minorities and women.

These actions illustrate that Justice Department, officials have repeatedly, and systematically undermined civil rights statutes enacted by Congress.

The statutes in question are:

- *The Civil Rights of Institutionalized Persons Act of 1980
- *The Voting Rights Act of 1965
- *The Fair Housing Act of 1968
- *Title IX of the Education Act Amendments of 1972
- *Title IV of the Civil Rights Act of 1964, and
- *Title VII of the Civil Rights Act of 1964

This assault on civil rights law enforcement can be attributed neither to the exercise of prosecutorial discretion by the Attorney General, nor to policy disputes about appropriate civil rights remedies. Prosecutorial discretion and policy differences cannot justify or explain so many aggressive attacks on so many existing statutory and judicial remedies for discrimination; nor can they account for actions which could very well weaken the federal government's civil rights enforcement machinery far into the future. Law enforcement discretion is clearly limited by the principle that the government cannot support illegal discrimination or undermine the mandate of Congress.[1]

There are three basic themes in the breakdown of federal civil rights enforcement which has taken place over the last three years. First, the Attorney General has sought to weaken drastically a crucial part of the federal government's law enforcement authority. His actions in the area of civil rights have been like those of a district attorney who decides to abandon fraud prosecutions because he disagrees with the way the legislature has defined the offense.

Second, the Attorney General has actively and repeatedly opposed voluntary efforts to remedy civil rights violations and has undermined long-established civil rights principles. He has reversed previous Justice Department positions on crucial legal issues in at least 19 separate lawsuits.

Third, the federal structure for enforcing civil rights is severely imperiled by proposed budget cuts, regulatory modifications and political manipulation of the federal government's only independent fact-finding and investigatory civil rights agency, the U.S. Commission on Civil Rights.

Of all the dangers in this breakdown in civil rights enforcement, the danger that looms largest is that it will breed widespread contempt for the law. How are private employers, state administrators and city officials to interpret the Justice Department's systematic refusal to faithfully execute the laws of the United States except as a signal from Washington that civil rights no longer have to be taken seriously?

This is a crucial question for this Committee in considering the nomination of Mr. Meese. The available evidence is that Mr. Meese has been centrally involved in directing or approving many of the civil rights actions taken by the Department of Justice over the past three years. What is his view of these actions today? What is his view of the role of Attorney General in enforcing the nation's civil rights laws? There are many other civil liberties issues of central importance to Mr. Meese's nomination--for example, his actions and views concerning secrecy in government, legal services for the poor, the right to be free from unreasonable search and seizure, and government surveillance of lawful political activities--but no issue is of greater importance than the role of the Attorney General in enforcing statutes and court decisions that guarantee equal justice under law.

Thank you for the opportunity to appear before the Committee.

APPENDIX

I. THE ADMINISTRATION REFUSES TO CARRY OUT STATUTORY MANDATES ESTABLISHED BY CONGRESS.

Each congressional grant of civil rights enforcement responsibility to the Department of Justice has been accompanied by a clear statement that Congress intended vigorous law enforcement action to follow. Indeed, the expectation of such vigorous enforcement action was often the basis for opposition in some parts of the Congress to key civil rights bills. In a manner without precedent in recent history, the current Justice Department has unilaterally sought to limit the reach of its own civil rights enforcement authority and that of other executive agencies.

Civil Rights of Institutionalized Persons Act

-- One of the best examples of how the Justice Department has weakened its own civil rights enforcement authority is its gutting of 1980 legislation giving the Attorney General new statutory authority to bring lawsuits to protect the rights of persons confined in government sponsored institutions.[3]

The central purpose of the Civil Rights of Institutionalized Persons Act was to ensure that the Justice Department's significant resources would be used to institute lawsuits challenging widespread rights violations by those who run public institutions. Prior to 1980 the Justice Department participated in a number of private lawsuits, but its authority to initiate legal action was under challenge.[4] Congress concluded, after extensive study of the problem, that the scope of the violations required new legislation. In the words of the Senate Judiciary Committee, "legal services and public interest attorneys lack the financial resources and personnel needed to sustain the protracted litigation required to redress system-wide abuse. In the absence of other available assistance, the only realistic source of hope for the institutionalized lies with the U.S. Attorney General."[5] The legislation was thus designed to foster litigative efforts, contrary to recent claims by the Reagan Administration.[6] The Senate Judiciary Committee concluded that "[e]xperience has shown. . ., that [litigation] is. . . the single most effective method for redressing systematic deprivations of institutionalized persons' constitutional and Federal statutory rights."[7]

The Reagan Administration has openly flaunted the purposes of this legislation in several ways.

-- The Justice Department has not filed any lawsuits to address conditions at any mental health or mental retardation institutions, even though the Department's own investigations have shown widespread abuses in institutions. For example, an Idaho investigation showed that emotionally disturbed children at three state institutions were subjected to abuses that included molestation by the hospital staff. Nonetheless, Assistant Attorney General William Bradford Reynolds reportedly turned down a staff recommendation to sue, on the grounds that there was no federal interest in the matter and that no constitutional rights were at stake.[8]

-- AAG Reynolds has repeatedly distorted the purpose of the legislation, claiming in recent congressional testimony that "an emphasis on conciliation rather than litigation -- is. . . the [approach] contemplated by Congress."[9] Rep. Robert W. Kastenmeier(D-WI), who chaired the House Subcommittee proceedings leading to the enactment of the legislation, quickly rebutted Mr. Reynolds' claim.[10]

-- The Justice Department switched sides in a case expressly mentioned by Congress as an example of the kind of situation in which the Justice Department had played a helpful role for the plaintiffs. Wyatt v. Ireland was initiated in 1971 to secure minimum constitutional levels of care and treatment for the patients at Alabama state mental hospitals. The original judge in the case ordered the Justice Department to participate as amicus curiae. As the Senate Committee Report stated, the case "marked not only the beginning of a series of lawsuits to secure fundamental rights for institutionalized individuals, but the inauguration of the Justice Department's litigation program to assist that effort."[11] Now, after more than a decade of helping the plaintiffs, the Justice Department joined the defendants in proposing a settlement which the plaintiffs have opposed.[12]

-- In another case cited by the Senate as an example of Justice Department advocacy for plaintiffs, Gary W. v. State of Louisiana,[13] the Reagan Administration has opposed a proposed settlement that had already been agreed to by the defendants.[14] The Justice Department's actions prompted the plaintiffs' counsel to tell the court, "[I]f DOJ persists in its new posture as guardian of the federal executive branch's or defendants' interests, then the plaintiff-class will have no choice but to move for DOJ's dismissal from this case."[15]

-- The Justice Department's actions led the judge in a case involving the Mississippi state prison, Gates v. Collier, to dismiss the Department from participation in the consideration of the key pending part of the litigation. Gates involves the rights of inmates in state custody. In May 1981 the court expanded the plaintiff class to include not only inmates at the state penitentiary, but also those the state had placed in county jails to relieve the overcrowding at the penitentiary. The Justice Department refused to participate in the proceedings to determine whether the conditions at the county facilities met the Constitutional standards already mandated by the court for the state penitentiary. The court eventually dismissed the Department from any involvement in those issues. In a harshly worded ruling, the judge wrote, "The Department has clearly indicated that the litigation interest of the United States is not in accord with current orders of this court concerning the use of county jails by the defendant officials and that the government does not propose to be bound thereby. The court finds that the interests of the United States in this cause are no longer co-extensive with or common to the interests of the plaintiff class." (Emphasis added.)[16] This was another case Congress cited when deciding to pass the 1980 law. The Senate Committee noted that "correctional and pretrial detention facilities have improved markedly as a result of suits. . . assisted by the Justice Department," citing a 1972 court order in Gates v. Collier as an example.[17]

-- Since the judge's action in *Gates* v. *Collier*, counsel for private plaintiffs in a prisoners' rights case in Oklahoma have asked the court to remove the Justice Department, charging that "[a]ttorneys for the United States have abdicated their lawful role in this litigation."[18]

-- In a very recent affront to the Civil Rights Division's responsibility as advocate for institutionalized persons, the Assistant Attorney General for Civil Rights authored a memorandum filed in the Supreme Court siding with the Los Angeles County Central Jail in a civil rights suit brought by pre-trial detainees.[19]

Voting Rights Act

The Voting Rights Act is widely regarded as the most effective federal civil rights law. A major reason is the requirement in Section 5 of the Act that jurisdictions with histories of voting discrimination obtain pre-implementation approval of election and voting changes from either a federal court or the Justice Department.[20] Several recent Justice Department actions demonstrate a failure to make full use of this essential tool for preventing discrimination. This failure inevitably undermines the impact of the statute and the intent of Congress in extending and strengthening it in 1982.

Under the law the jurisdiction has the sole burden of proving a proposed change is not discriminatory. If the evidence leaves any doubt about this, the Attorney General *must* object to implementation of the proposed change.[21]

Placement of the burden of proof on the jurisdiction is consistent with and required by the statute. A 1973 Supreme Court decision affirmed this interpretation. Assistant Attorney General Reynolds co-authored the United States brief supporting that portion of the regulation when he worked for the Solicitor General. On February 21, 1984 a unanimous Supreme Court reaffirmed the law's burden of proof requirement.[22]

-- In June 1982 the Justice Department precleared Louisiana's realignment of state congressional districts despite substantial evidence that it was discriminatory. Relying on the same evidence, private plaintiffs soon persuaded a federal court that the plan was discriminatory. It is implausible that the Justice Department could have been persuaded beyond any doubt that the state had proven just the opposite. The conclusion is inescapable that the Department did not require the state to prove its position, as the law requires.

The available evidence included public statements by the Governor that he opposed a plan that the legislature had already approved because it would create a majority black district. The court found that the Governor's threatened veto played a "decisive role" in the legislature's abandonment of that plan. The substitute plan, which was designed to meet the governor's objections, is the plan the court found discriminatory.[23]

-- A North Carolina plan pre-cleared by the Department was also rejected in subsequent court action where private plaintiffs proved it was discriminatory.[24]

-- In a court action by Sumter County, South Carolina to get approval of a plan for the election of county officers, the Justice Department has told the court that in some significant instances the burden is on those who challenge the plan to prove that it violates the Act.[25] This is directly contrary to the intent of Congress in making the 1982 changes in the law and led affected county residents to intervene in the lawsuit in order to protect their interests in the case.[26]

Fair Housing Act

-- The Attorney General's enforcement authority in the area of fair housing comes from the "Fair Housing Act," Title VIII of the 1968 Civil Rights Act. Federal courts and the Congress have repeatedly stated that a violation of the Act may be proven by showing either that an intentional act of discrimination has been committed or that actions complained of have had a discriminatory effect. This "effects test" is crucial to the vindication of civil rights in housing because of the variety of subtle discriminatory techniques that have developed over the years.

As recently as 1980, during consideration of proposed Fair Housing Act Amendments, the Senate and House Judiciary Committees took note of the fact that the effects test is the law.[27] Four federal appeals courts have endorsed the same position.[28] Every prior administration has conducted its fair housing litigation in a manner consistent with this understanding of the law.

In defiance of the clear legal standard, the Reagan Administration has taken upon itself to redefine the law to its liking. The "effects" test, previously utilized in much pending litigation, is being or has been deleted from Justice Department briefs and pleadings. The Division substituted the more difficult standard of intent in its suit against the City of Birmingham, Michigan.[29] The Division also employed the "effects" test at trial in a fair housing suit against Parma, Ohio, then failed to argue that aspect of the case on appeal.[30] Further, the Division lost its first housing case, when Division attorneys were ordered not to utilize the "effects" test despite preparation of those arguments according to former chief of the section which handles housing cases, Robert Reinstein.[31]

Title IX of the Education Amendments of 1972

Title IX of the Education Amendments of 1972 prohibits sex discrimination in federally funded education programs.[32] It was enacted as a means of advancing equality of opportunity for women and girls in education, and intended to apply to any institutions receiving any portion of its funding from a federal source. This was made clear at the time of enactment and reaffirmed by later events.[33]

These Amendments gave special recognition to the role of education in eliminating discrimination within our society and to the concept that federal monies may not be used to aid discrimination, even indirectly. The Reagan Administration has ignored prior administrations and contravened congressional intent by reading Title IX's sanction, which is a cut-off of federal funding, in the most narrow manner possible, thereby effectively stripping the statute of any enforcement mechanism.

-- The Justice Department brief in Grove City College v. Bell urged the Supreme Court to limit the scope of Title IX to the specific office receiving federal funds even if the funds were mingled with other institutional money in a way which made them available for use throughout the institution.[34] This position was such a narrow reading of the statute's purposes that a congressional brief cautioned the Supreme Court that if the Justice Department position prevailed, this law's primary sanction, termination of funds to the school, "would be effectively nullified."[35] In further evidence that the Justice Department's position is inconsistent with congressional intent, 414 members of the House of Representatives voted on November 16, 1983 for a resolution making clear that Title IX is to be read broadly.[36]

-- In 1982 the Justice Department declined to appeal a federal court opinion in University of Richmond v. Bell requiring the Department of Education to investigate possible Title IX violations only if the agency first identified federal funds specifically earmarked for and received by the program where the alleged discrimination occurred.[37]

-- Assistant Attorney General Reynolds instructed the Assistant Secretary of Education for Civil Rights to apply the restrictive Richmond ruling to all parts of the country. It appears the approach will effect even those places where court decisions permit a broader investigatory authority.[38]

The actions to weaken Title IX have grave implications for the other laws which prohibit discriminatory uses of federal funds, including Title VI of the 1964 Civil Rights Act, on which Title IX was modeled, and Section 504 of the Rehabilitation Act of 1973, also fashioned after Title VI. They ban discrimination based on race, color, national origin, and handicap.

II. THE ADMINISTRATION ACTIVELY OPPOSES ESTABLISHED CIVIL RIGHTS PRINCIPLES AND IMPEDES VOLUNTARY COMPLIANCE WITH THE LAW.

Motivated by its distaste for existing law, the administration has tried to make certain remedies for proven discrimination unavailable, and has harmed voluntary efforts to combat violations of civil rights laws. Congress and the courts have long recognized that a principal purpose of the federal government's involvement in civil rights enforcement is to set standards for non-federal enforcement and voluntary compliance with the law. For example, in the legislative history of the Civil Rights of Institutionalized Persons Act the Senate Judiciary Committee noted that because of the prospect of Justice Department involvement in lawsuits as a friend of the court or intervenor states have "voluntarily upgraded conditions in their institutions and rewritten State commitment laws to comply with previously announced constitutional standards."[39] Later, the committee noted that the relief secured through cases in which the Department was involved ". . .serves as a national precedent, alerting states across the nation to minimum constitutional standards. . . ."[40] The Supreme Court noted recently that the House Report accompanying the 1964 Civil Rights Act makes clear that Congress saw voluntary efforts as one means of addressing race discrimination in employment. The Report states "There is reason to believe. . . that national leadership provided by enactment of Federal legislation dealinq with the most troublesome problems will create an atmosphere conducive to voluntary or local resolution of other forms of discrimination."[41]

Federal Tax Law and Nondiscrimination Policy

In January 1982 the Justice Department claimed in the Bob Jones case that there was "no support in the language. . . or. . . legislative history" of the internal revenue code to support denial of tax exemptions to discriminatory schools.[42] The Supreme Court's 1983 decision in the case left no doubt that the Administration's position was fundamentally inconsistent with well-established legal principles. The Court stated, "The correctness of the Commissioner's conclusion that a racially discriminatory private school is not 'charitable' within the common law concepts reflected in. . . the Code, '. . . is wholly consistent with what Congress, the Executive and the courts had repeatedly declared before 1970. Indeed, it would be anomalous for the Executive, Legislative and Judicial Branches to reach conclusions that add up to a firm public policy on racial discrimination, and at the same time have the IRS blissfully ignore what all three branches of the Federal Government had declared. . . . The actions of Congress since 1970 leave no doubt that the IRS reached the correct conclusion in exercising its authority. . . ."[43]

School Desegregation

Since taking office the Reagan Administration has deliberately subverted congressional intent by undermining existing law instead of actively pursuing a policy of school desegregation.

-- The national policy against racial segregation in education was clearly stated by the Supreme Court in Brown v. Board of Education.[44] Since 1964 with the passage of the Civil Rights Act, Congress has mandated that the Justice Department take responsibility to enforce desegregation orders. Both Title IV of the 1964 Act and the Education Amendments of 1974, make clear that the only proper role of the Attorney General of the United States is to foster desegregation.[45] No other relationship to the problem of unconstitutional segregation of public schools has ever been articulated for the Attorney General by either the Congress or the federal courts.

In the 1964 Civil Rights Act Congress gave the Attorney General litigating authority to "materially further the orderly achievement of desegregation."[46] In 1974 Congress spelled out a list of remedies for proven segregation, including a priority ranking of those remedies. At the same time, Congress explicitly acknowledged that the responsibility for ordering remedies remained with the federal courts. The expressed preference for certain school desegregation remedies is not applicable to voluntary plans, which may be designed by school boards without having to fit the standards set out in the 1974 law.[47]

On numerous occasions, Congress has reviewed federal policy in the area of school desegregation. The established role of the Justice Department in school desegregation litigation was ratified as recently as 1982, when Congress rejected efforts both to limit the Department's ability to litigate school desegregation cases and strip the federal courts of their jurisdiction to order certain remedies in such cases.[48]

-- On at least two occasions the Reagan Administration has flaunted the 1974 law which permits flexibility in the development of voluntary plans. The administration opposed a voluntary desegregation plan in Seattle, Washington which was later upheld by the Supreme Court.[49] In St. Louis, Missouri the Justice Department objected to a comprehensive and voluntary desegregation plan, agreed to by the local communities. These objections were repudiated by the District Court.[50]

-- In a Charleston, South Carolina school desegregation case the Justice Department abused the very basis of its litigating authority. The law permitting the Department to file suit requires that the litigation be based on a written complaint from affected parents that they believe their children's rights to equal educational opportunity have been denied. Moreover, the Attorney General must certify in filing the suit that the complaint has merit and that Justice Department action is necessary because the affected persons are unable to maintain appropriate litigation themselves.[51] The Assistant Attorney General for Civil Rights opposed the efforts of parents to intervene in the case which was begun for the express purpose of vindicating the rights of their children.[52] His claim that the Justice Department was already adequately representing the children's interests was refuted by the fact that the parents' desire to enter the case was based on their concerns about the Department's handling of the matter.

As the plaintiffs told the court, "[I]t cannot be said that the government adequately represents the interests of black ~~school children in Charleston County. It has made it clear~~ beyond peradventure that under no circumstances will it seek the full range of remedies made available and even mandated in some instances by the Supreme Court. And in a policy with potential substantive impact on proving liability, it refuses to utilize a key presumption which shifts the burden of proof at trial to defendants. *Keyes* v. *School District No. 1* 413 U.S. 189 (1973)"[53]

-- In 1982 Department of Education officials determined that the Bakersfield, California school district suffered the effects of de jure segregation in violation of Title VI of the 1964 Civil Rights Act. The Department further noted that the school district "refus[es]" to dismantle fully its intentionally segregated elementary school system because the remedy implicitly required by administrative proceedings will necessarily have to include the transportation of some students. . . ."[54]

In clear disregard of the constitutional requirement that discrimination be remedied, the Justice Department subsequently approved a voluntary magnet school desegregation plan that permits the continuation of segregated schools. Assistant Attorney General Reynolds acknowledged in a press conference on January 25, 1983 that the school district could satisfy the consent decree even if segregation continued, so long as it provides "an even-handed opportunity to every child in the system." He thus resurrected the repudiated doctrine of "separate but equal." In what can only have been a deliberate distortion of the Supreme Court's ruling and the intent of Congress Reynolds reportedly said, "The Supreme Court has told us there is nothing wrong with a school that is racially unbalanced. . . . It is only unconstitutional when it is a forced situation."[55] As noted above, Congress stated that the reason it gave the Attorney General authority to file school desegregation lawsuits was to "materially further the orderly achievement of desegregation."[56] The Supreme Court has declared that "[a]ll things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation."[57] Thus the Supreme Court has concluded bus transportation of students may be necessary to achieve constitutionally mandated desegregation. As Chief Justice Burger stated, "[d]esegregation plans cannot be limited to the walk-in school."[58] Assistant Attorney General Reynolds has a duty to abide by these congressional and judicial declarations. His actions and statements regarding the Bakersfield school district demonstrate a blatant disregard of this duty.

The 14th Amendment Right to Equal Educational Opportunity

The assault on established civil rights principles has affected fundamental constitutional protections. In Plyler v. Doe,[59] the Supreme Court held that children who are illegal aliens have a constitutional right to a free public education. The Court struck down a Texas law that required local school districts to exclude children of illegal aliens from the public schools or to admit them only upon payment of tuition. The Justice Department had argued successfully in support of the position of the aliens in the lower courts. When the case reached the Supreme Court in 1981 however, the Solicitor General abandoned the government's previous position, stating that the United States no longer had a view on whether the Texas statute violated the equal protection clause.

The Reagan Administration's abrupt about-face is particularly troublesome in Plyler v. Doe because of the clear effect of the Texas statute. As the Supreme court recognized, the inability to read or write will handicap children throughout their lives. Noting that any financial savings to the state are insubstantial when compared to the costs to the children and the state, the Court asserted that "[i]t is difficult to understand precisely what the state hopes to achieve by promoting the creation and perpetuation of a subclass of illiterates. . . adding to the problems and costs of unemployment, welfare, and crime." Moreover, the Solicitor General's brief marked the first time since the days of Reconstruction when the federal government stated it had no "interest" in whether the Fourteenth Amendment was enforced by a state.

Employment Discrimination

Title VII of the 1964 Civil Rights Act prohibits employment discrimination based on race, national origin, sex or religion. The power to enforce Title VII against proscribed discriminatory patterns or practices of state and local governments rests with the Department of Justice. The extent of relief which Congress contemplated for violations of Title VII demonstrates congressional intent to iradicate discrimination and places the Justice Department in an aggressive role, prosecuting those who discriminate. Orders requiring affirmative action need not be limited to reinstatement, hiring or back pay.[60] This intent is demonstrated in the Committee Report recognition that ". . .unrelenting broad scale action against patterns or practices of discrimination is. . . critical in combating employment discrimination."[61]

The Administration's assault on the intended purposes of Title VII of the 1964 Civil Rights Act has been made evident in several recent actions.

-- Assistant Attorney General Reynolds has announced his determination to challenge the federal court's decision in the case of *AFSCME* v. *State of Washington*.[62] This case is an extension of the doctrine interpreted by the Supreme Court in *County of Washington* v. *Gunther*[63] which establishes that discrimination in compensation is illegal under Title VII even if men and women are performing different jobs. The judge's decision in the *AFSCME* case found the State of Washington guilty of intentional class discrimination through the payment of lower wages to jobs which, according to the state's own job evaluation, require the same levels of skill, training and effort.

Reynolds' determination to attack this decision is so great that he stated his position before he had had an opportunity to review most of the evidence that led to the court's decision.[64]

-- The Department recently attempted unsuccessfully to have the Supreme Court review the constitutionality of a voluntary plan designed by the Detroit police department to remedy a history of racial discrimination that had denied employment opportunities to blacks.[65] The amicus curiae memorandum of the Justice Department is at odds with many court decisions supporting race-conscious affirmative action to remedy the effects of discrimination.[66]

-- *Williams* v. *New Orleans*,[67] like the Detroit case, involves a voluntary police promotion plan approved by a federal district court. Although the Equal Employment Opportunity

Commission is the principal federal agency for equal employment opportunity, the Justice Department did not inform the EEOC of its intention to intervene in the New Orleans case at the appeals level. The Justice Department appeals brief attacked the affirmative action requirement that one black officer be promoted for every white promotion until 50% of the supervisory positions were held by blacks. (New Orleans' population is 55% black.) The EEOC, according to press reports, was dissuaded by the Justice Department and the White House from filing the brief it had drafted which criticized the DOJ position.[68]

The Justice Department's position in these two cases is part of a deliberate disregard of interpretations of Title VII. Race-conscious affirmative action (including so-called quota relief) has been approved for correcting the effects of discrimination in more than twenty federal courts of appeals decisions.[69] Thirteen involved public employers (a fact which is ignored in the Administration's claim in the Bratton memorandum that the issues there "have evaded clear resolution by this Court and the lower courts."[70]

-- To carry out the congressionally-mandated authority to ensure equal employment opportunity in the federal government, the Equal Employment Opportunity Commission requires, in Management Directives 707 and 707(a), that all of the federal agencies report general goals and targets for the hiring of minorities and women. Last year the Justice Department refused to comply and still has not transmitted the required report to EEOC.[71] One apparent effect of this refusal has been to foster other acts of noncompliance. The Chairman of the National Endowment for the Humanities has recently announced his refusal to submit his agency's required report.[72]

III. THE ADMINISTRATION HAS SYSTEMATICALLY ASSAULTED THE FEDERAL CIVIL RIGHTS ENFORCEMENT STRUCTURE.

The Administration is doing much more than imposing its policy views on present cases and enforcement activities. It is systematically assaulting the very structure of the federal civil rights machinery. If unchecked, these actions will do such fundamental harm to federal civil rights enforcement that the next administration will inherit weakened agencies with fewer financial and staff resources and deteriorated regulatory authority.

-- Budget documents show how for two successive years the administration has planned to cut funds for civil rights enforcement in a number of crucial agencies and programs, despite its claims to the contrary. The affected agencies include the civil rights offices at the Departments of Education, Housing and Urban Development and Health and Human Services.[73]

-- Proposed regulations would severely weaken the enforcement authority of the Labor Department's Office of Federal Contract Compliance Programs, which implements the requirement that federal contractors maintain nondiscriminatory employment practices and engage in affirmative action efforts for the hiring of minorities and women.

-- The law banning discrimination against handicapped persons in federally assisted and federally conducted programs has been under assault through efforts to promulgate regulations that would impede enforcement of the law.[74]

-- The U.S. Commission on Civil Rights, the nation's only civil rights agency charged with the responsibility for objective analysis and appraisal of civil rights laws and policies, has been transformed into an instrument of presidential policy. The manipulation of the Civil Rights Commission was so contrary to the congressional intent establishing the Commission in 1957 and reauthorizing it in subsequent years, that Congress took upon itself the authority to appoint half of the Commissioners. White House officials then sabotaged a plan to ensure the Commission's independence by repudiating key features of the agreement reached among congressional leaders and the civil rights community.

CONCLUSION

The actions described above reveal a pattern of disregard by the Executive Branch for the rule of law and the mandates of the legislature. The principles subverted by such disregard are not debatable -- they are the core of our democratic constitutional system. When they are undermined, grave harm is done to our legal system and the confidence the people may have in it. The significance of these principles was expressed by the Supreme Court nearly two centuries ago:

> "[W]here the heads of departments are the political or confidential agents of the executive, merely to execute the will of the President, or rather to act in cases in which the executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy."
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> ". . .Where the head of a department. . . is directed by law to do a certain act affecting the absolute rights of individuals, in the performance of which he is not placed under the particular direction of the President, and the performance of which the President cannot lawfully forbid, . . .it is not perceived on what ground the courts of the country are further excused from the duty of giving judgment that right be done to an injured individual,. . ." *Marbury v. Madison*, 1 Cranch 137, 166, 170-71 (1803).

Since 1803, amendments to the Constitution and dozens of congressional and judicial decisions have reaffirmed the principle expressed by Chief Justice John Marshall -- that the officers of the Executive Branch do not operate with unfettered discretion, particularly when constitutional rights are at stake. Their clear duty is to carry out the laws enacted by Congress, so long as those laws are consistent with the Constitution. To an unprecedented degree, the officials of this administration have flaunted that duty.

FOOTNOTES

1. Cooper v. Aaron, 358 U.S.1(1958), Brown v. Califano, 627 F.2d 1221 (D.C. Cir 1980).

2. Ross v. Houston Indep. School District, civ. action No. 10444 (S.D. Tex. June 17, 1981) 282 F. 2d 95 (5th Cir.) cert. denied, 364 U.S. 803 (1960); United States v. Texas Education Agency, 647 F.2d 504 (5th Cir. 1980), cert. denied, 102; Seattle School District v. Washington, 473 F. Supp. 996 (W.D. Wash. 1979), aff'd 633 F.2d 1338 (9th Cir. 1980), aff'd ______ U.S. ______ (1982); Davis v. East Baton Rouge Parish School Bd., 721 F.2d 1425 (5th Cir. 1983) City of Lockhart v. United States, _____ U.S. _____(1982); Ruiz v. Estelle, No. 81-225 (5th Cir.); Newman v. Alabama, App. No. 81-8003(11th Cir.); Youngberg v. Romeo, 644 F.2d 147 (3rd Cir. 1980)(en banc), vacated and remanded, 457 U.S. 307 (1982); Mills v. Rogers 634 F.2d 650 (1st Cir. 1980), vacated and remanded 457 U.S. 291 (1982); Hewitt v. Helms, No. 81-638 (filed 10/81); Connecticut v. Teal, 457 U.S. 440 (1982); Georgia Association for Retarded Citizens v. McDaniel, No. 81-7485 (11th Cir. Oct. 17, 1983); Wyatt v. Ireland, Civil Action No. 3195-N, M.D. Ala., No. Division); Gary W. v. Louisiana, C.A. No. 74-2412 "C", E.D.La.); Gates v. Collier, No. GC 71-6-K, N.D. Miss., Greenville Division); United States v. City of Birmingham, Michigan, 538 F.Supp. 819 (E.D. Mich., S.D. 1982); United States v. Parma, 494

F.Supp. 1049(N.D. Ohio 1980), aff'd in part 661 F.2d 562 (6th Cir. 1981); Grove City College v. Bell, No. 82-792; Plyler v. Doe 457 U.S. 202 (1982).

3. 42 U.S.C. 1997.

4. Senate Report No. 96-416, printed in 1980 U.S. Code Congressional and Administrative News (U.S.C.C.A), p. 789.

5. Id., p. 809.

6. Congressional testimony of Assistant Attorney General for Civil Rights, William Bradford Reynolds, November 17, 1983, before the Senate Subcommittee on the Handicapped, Committee on Labor and Human Resources, pp. 5-6 and February 8, 1984 before a joint hearing of the House Subcommittees on Courts, Civil Liberties and the Administration of Justice and Civil and Constitutional Rights, p. 3.

7. 1980 U.S.C.C.A. p. 809.

Memorandum resigning from the Department of Justice, Timothy M. Cook, October 18, 1983, pp. 7-8.

9. Reynolds, February 8, 1984 congressional testimony (see note 7), p. 3.

10. Statement of Rep. Kastenmeier during hearing on February 8, 1984.

11. 1980 U.S.C.C.A., p. 791.

12. Wyatt v. Ireland, Civil Action No. 3195-N, (M.D. Ala., No. Division) Opinion of the Court, February 1, 1983, pp. 8-10.

13. 1980 U.S.C.C.A., pp.792-93.

14. Gary W. v. State of Louisiana, C.A. No.74-2412 "C" (E.D.La.) Joint Motion and Memorandum of defendants and plaintiffs, September 22, 1983; Memorandum in Opposition to Letter and Motion of United States, Plaintiffs-Interveners, October 6-7, 1983.

15. Gary W. v. State of Louisiana, Plaintiff's Supplemental Memorandum in Support of Motion to Approve Placement Procedure Order, November 15, 1983, p. 4.

16. Gates v. Collier, No. GC 71-6-K (N.D. Miss. Greenville Division) Order, January 6, 1983, pp. 2-3.

17. 1980 U.S.C.C.A., p. 796.

18. Battle v. Anderson, No. Civ. 72-95 (E.D. Okla.) Application filed November 21, 1983 and see 708 F.2d. 1523 (10th Cir. 1983).

19. Block v. Rutherford, No. 83-317, Memorandum for the United States as amicus curiae, filed December 22, 1983.

20. 42 U.S.C. 1973c.

21. 28 C.F.R. Sec. 51.39 Justice Department Procedures for the Administration of Section 5 of the Voting Right Act of 1965.

22. Georgia v. United States, 411 U.S. 526(1973), Briefs of Counsel 36 L.Ed. 2d 1033-34; McCain v. Lybrand, ____ U.S. ____ February 21, 1984.

23. Major v. Treen, 574 F. Supp. 325 (E.D. La. 1983).

24. Gingles v. Edmisten, No. 81-803-Civ-5 (E.D.N.C., Raleigh Division), Memorandum Opinion, January 27, 1984.

25. **County Council of Sumter County, South Carolina v. United States**, C.A. No. 82-0912 (D.D.C.) Pretrial Brief for the United States, pp. 73-74.

26. **Id.**, Memorandum in Support of Petition for Leave to Intervene.

27. Sen. Rept. 96-919, pp. 18-19 and House Rept. 96-865, p. 12.

28. **United States v. Pelzer Realty Co., Inc.**, 484 F. 2d 438 (5th Cir., 1973) cert. denied 416 U.S. 936 (1974); **United States v. City of Black Jack**, 508 F. 2d 1179 (8th Cir. 1974) cert. denied, 422 U.S. 1042 (1975); **Resident Advisory Board v. Rizzo**, 564 F.2d 126 (3d Cir. 1977), cert. denied. _____U.S._____; **Metropolitan Housing Development Corp. v. Village of Arlington Heights**, 558 F. 2d 1283 (7th Cir. 1977) cert. denied 434 U.S. 1025 (1978).

29. **United States v. City of Birmingham**, 538 F. Supp. 819 (E.D. Mich., S.D. 1982).

30. **United States v. Parma**, 494 F. Supp. 1049 (N.D. Ohio 1980).

31. **Angell v. Zinsser**, No. 79-229 (D. Conn. Oct. 14, 1981). The statement was attributed to Mr. Reinstein in a report by The Washington Council of Lawyers, "Reagan Civil Rights: The First Twenty Months," p. 22.

32. 20 U.S.C. 1681.

33. For example, implementing regulations consistent with this view of the law were presented to Congress in 1975 for a 45-day review period that would have permitted Congress to reject them, but they were allowed to take effect without congressional objection. See Brief of the Honorable Claudine Schneider, et. al as amicus curiae in **Grove City College v. Bell**, No. 82-792, pp. 33-34, p. 40.

34. Brief for Respondents in **Grove City College v. Bell**, No. 82-792, p. 43, note 50.

35. Brief of Hon. Claudine Schneider, p. 48.

36. **Congressional Record**, November 16, 1983, pp. H10100-01.

37. **University of Richmond v. Bell**, 543 F. Supp. 321 (E.D. Va. 1982).

38. **The Washington Post**, Monday, September 12, 1983.

39. 1980 U.S.C.C.A., p. 789.

40. **Id.** at 805.

41. Quoted in **United Steelworkers v. Weber**, 443 U.S. 193, 204 (1979).

42. Brief for the United States, **Goldsboro Christian Schools, Inc. v. United States** and **Bob Jones University v. United States**, Nos. 81-1 and 81-3, p. 11.

43. **Bob Jones University v. United States**, _____ U.S. _____, 76 L. Ed. 2d. 157 (1983) pp. 177-78.

44. 347 U.S. 483 (1954).

45. 42 U.S.C. 2000c-6; 20 U.S.C. 1706.

46. 42 U.S.C. 2000c-6.

47. 42 U.S.C. 1716.

48. The Helms/Johnston Amendment to the Justice Department Authorization bill was not enacted into law. Having passed the Senate it never received a favorable report by the House Judiciary Committee.

49. **Seattle School Districtv. Washington,** _____ U.S. _____, 73 L. Ed. 2d. 896 (1982), Memorandum for the United States filed with the Supreme Court.

50. **Liddell v. Board of Education,** 12-1000.

51. 42 U.S.C. Sec. 2000c-6.

52. **United States** v. **Charleston County Consolidated School District,** Civil Action No. 81-50-8, United States Reponse to Petition for Intervention, p. 3.

53. **Id.,** Reply to United States Response to Petition for Intervention, pp. 11-12.

54. Letter from Daniel Oliver, General Counsel, Department of Education, to William Bradford Reynolds, July 9, 1982.

55. Quoted in **The Washington Post,** January 26, 1984, p. A1.

56. 42 U.S.C. 2000c-6.

57. **Swann v. Charlotte-Mecklenberg Bd. of Education,** 402 U.S. 1 (1971).

58. **Id.** at 29.

59. 457 U.S. 202 (1982).

60. 42 U.S.C. 2000e-6 and Reorganization Plan No. 1 of 1978, 43 F.R. 19807.

61. 1972 U.S.C.C.A. p. 2149.

62. No. C82-4657, (N.D. Wash., December 14, 1983). AAG Reynolds was quoted in **The New York Times,** January 22, 1984.

63. 452 U.S. 161 (1981).

64. **The New York Times,** January 22, 1984.

65. **Bratton v. City of Detroit;** No. 83-551, Memorandum for the United States as Amicus Curiae.

66. **United Steelworkers v. Weber,** 443 U.S. 193 (1979); **University of California Regents v. Bakke,** 438 U.S. 265 (1978); **Fullilove v. Klutznick,** 448 U.S. 448 (1980).

67. No. 82-3435, 5th Cir.

68. **The Washington Post,** April 7, 1983.

69. See attached list.

70. **Bratton v. City of Detroit,** Memoradum for the United States, p. 10.

71. **The Washington Post,** September 7, 1983, p. A15.

72. **The Washington Post,** January 19, 1984.

73. See, "Civil Rights and the Reagan FY'84 Budget", a report by the ACLU, and the President's Budget for Fiscal Year 1985 and supporting materials.

74. Notice of Proposed Rulemaking, Federal Register, Vol. 47, p. 17770, April 23, 1982. See, "Staff Report on the Department of Labor's Proposed Final Affirmative Action Regulations," House Subcommittee on Employment Opportunities, Committee on Education and Labor, December 1983.

75. See, e.g. Notice of Proposed Rulemaking, Federal Register, Vol. 48 p. 55996 Friday, December 16, 1983.

List of Cases for Footnote 69.

Starred cases involved public employers.

*Boston Chapter NAACP, Inc. v. Beecher, 504 F.2d 1017 (1st Cir. 1974), cert. denied 421 U.S. 910 (1973);

Assoc. General Contractors of Massachusetts, Inc. v. Altshuler, 490 F.2d 9 (1st Cir. 1973), cert. denied, 416 U.S. 957 (1974);

*Guardians Assn of New York City Police Dept. v. Civil Service Comm. of City of New York, _____ U.S. _____ July 1, (1983);

*United States v. City of Buffalo, 633 F.2d 643 (2d. Cir. 1980);

*Assn. Against Discrimination v. City of Bridgeport, 647 F.2d 256 (2d Cir. 1981), cert. denied 455 U.S. 988 (1982);

EEOC v. AT&T, 556 F. 2d 167 (3d. Cir. 1977), cert. denied 438 U.S. 915 (1978) United States v. Internl. Union of Elevator Const., 538 F. 2d 1012 (3d. Cir. 1976);

Contractors Assn. of Western Pa. v. Kreps. 573 F. 2d 811 (3d. Cir. 1978);

Chisholm v. Postal Service, 665 F. 2d 482 (4th Cir. 1981) cert. denied. 456 U.S. 96 (1982);

*United States v. City of Miami, 614 F. 2d 1322 (5th Cir. 1980);

*Morrow v. Crisler, 491 F. 2d 1053 (5th Cir. 1974);

*Phillips v. Joint Legislative Comm., 637 F. 2d 1014 (5th Cir. 1981);

United States v. Masonry Cont. Assn of Memphis, Inc., 497 F. 2d 871 (6th Cir. 1974);

*Detroit Police Officers Assn. v. Young, 608 F. 2d 671 (6th Cir. 1979), cert. denied 452 U.S. 938 (1981);

*United States v. City of Chicago, 663 F.2d 1354 (7th Cir. 1981)(en banc);

Crockett v. Green, 534 F. 2d 715 (7th Cir. 1976);

*Valentine v. Smith, 654 F.2d 503 (8th Cir. 1981);

*Firefighters Institute v. City of St. Louis, 588 F.2d 235 (8th Cir. 1978) and 618 F.2d 350 (1980) cert. denied 443 U.S. 904 (1979);

List of Cases for Footnote 69 (continued).
Starred cases involved public employers.

*Carter v. Gallagher, 452 F2d 315 (8th Cir. 1971)(en banc opinion at 327) cert. denied, 406 U.S. 950 (1972);

United States v. N.L. Industries, Inc., 479 F.2d 354 (8th Cir. 1973);

*Davis v. County of Los Angeles, 566 F. 2d 1334 (9th Cir. 1977), vacated as moot, 440 U.S. 625 (1979);

United States v. Ironworkers Local 86, 443 F.2d 544 (9th Cir. 1971) cert. denied 404 U.S. 984 (1971);

Legal Aid Society v. Brennan, 608 F.2d 1319 (9th Cir. 1979), cert. denied 447 U.S. 921 (1980);

United States v. Lee Way Motor Freight, 625 F.2d 918 (10th Cir. 1979).

Senator SIMPSON. Mr. Leo Scanlon, please.

Mr. SCANLON. Thank you very much, sir. I appreciate the opportunity to testify before the committee. Speaking on behalf of the National Democratic Policy Committee, I would like to begin by pointing out that although we are——

Senator BIDEN. Excuse me. Can you identify for the record who—are you and I in the same party?

Mr. SCANLON. Yes, sir.

Senator BIDEN. OK, good. Who is the National Democratic Policy Committee?

Mr. SCANLON. The National Democratic Policy Committee is a nationwide political action committee which is currently running candidates in approximately 3,500 different local offices across the country, and is a principal political action committee supporting the candidacy of Lyndon H. LaRouche Jr., for President of the United States in a variety of primaries—approximately 15 at this time.

Senator BIDEN. I do not think we are in the same party, but go ahead; OK. Fire away. [Laughter.]

I thought maybe the National Democratic Committee—you know, the old-fashioned one—sent you up here.

Mr. SCANLON. Absolutely not.

Senator BIDEN. That is OK; thanks.

Mr. SCANLON. So, as I was saying, although we admire and respect Mr. Meese personally and in his capacity as a public servant, we find much of the belabored examination of his personal finances and other things to be in the category of scraping the bottom of the barrel of irrelevancies in dealing with the matter facing the Attorney General.

We nonetheless would like to point out that during the course of Mr. Meese's tenure as counsel to the President, there has been an incredible growth in powers delegated to the Federal Bureau of Investigation—powers which have been misused in a very systematic manner, to the detriment of the security of our Nation; a process which has contributed greatly to the blinding of our Nation to some of the severe terrorist threats facing the country.

And as a result of actions on the part of Mr. Meese, we must advise the committee that we feel that Mr. Meese has not yet demonstrated either the emotional or the intellectual ability to function as Attorney General at this time and to deal with the nature of the crisis that the Nation is facing.

Before describing the central importance of the problems of the FBI, I would like to say that the foremost challenge facing U.S. law enforcement is the horrific growth of the phenomenon of narco-terrorism; that is, the interlinked drug and gun traffic which is financing international terrorism directed against nations such as the nation of Colombia which are trying to inhibit drug traffic, and also directed against the United States itself.

The record of my written testimony details to some extent the record of terrorist attacks on the United States in the recent period. I would like to recommend that any Attorney General, in order to carry out an effective counter-terrorist program, must lead in creating an effective interdepartmental and inter-agency body similar to Vice President Bush's national narcotics border interdiction system that would fight internationally against terrorism.

For reasons which will be elaborated below, that responsibility cannot be left with the FBI, which was made lead agency against terrorism as the result of a 1982 classified Presidential order.

There are two main reasons for U.S. failure to come to grips with the problem of international terrorism. First is the State Department's continuing timidity about identifying and placing sanctions against such countries as Libya and Iran which are responsible for training, financing and recruiting terrorists against the United States.

In the case of Iran, I should note that the State Department is continuing to side with the Government of Khomeini, whose military is conducting war atrocities that have not been seen since the last days of Hitler's regime.

Second of all, and related, is the total failure to grasp that most terrorism today emanates from a centralized command of the Soviet KGB, which uses as its primary instrument the Nazi International based in Switzerland. This combined command, detailed in my written testimony, of Nazis and Communists is the hidden hand behind terrorism in the Middle East, the United States and Europe.

The primary intelligence problem facing the United States is the accurate rooting out of this capacity, and it is from that standpoint that I would like to address the problems of the FBI.

In a national television broadcast, December 18, 1983, FBI Director William Webster shocked the country and caused considerable concern within the U.S. intelligence and law enforcement community by repeatedly insisting that the United States does not have an active terrorist problem.

The following are excerpts from a discussion between Webster and David Brinkley during that broadcast. Mr. Brinkley said:

> In recent years, we have had the Red Brigades, the IRA, the PFLP. Is something like that developing in this country, some kind of gang underground or something with violent intentions?

Mr. Webster replied:

> I do not think so. The closest thing we had to that developed out of the Brink's robbery. Those groups have been largely wrapped up; very few domestic organizations of any size and nothing cohesive at all.

Webster's downplaying of the terrorist threat is consistent with his year-long insistence that the Soviet Union has no influence in the U.S. peace movement. His public statements to that effect have been released in a fashion so as to undermine the efforts of those, including the President, who have tried to warn the country of this very problem.

In part, Judge Webster's coverup of the Soviet role in the peace movement is politically motivated. In May 1983, a 26-person delegation of Soviet officials made a tour of the United States which began with a parlay with top U.S. peaceniks closely connected to the political apparatus of Democratic Presidential hopeful Walter Mondale.

At that meeting, the Soviet delegates, including one identified KGB official, General Mikhail Milstein, gave precise political policy orders to these members of the Mondale political apparatus associated with the leadership of the peace movement in the United States.

This is not the only case of the FBI covering up or intervening politically into a matter regarding intelligence matters. In Mexico, according to eyewitness reports, the FBI was directly deployed to assist the PAN, the Party Action Nacional, a fascist insurrectionary party allied to the Mexican Communist party in elections in Sonora.

At home, the FBI has continued to coverup the terrorist networks deployed by the Ayatollah Khomeini—terrorist networks still inplace, targeting anti-Khomeini leaders and U.S. nationals.

In particular, Iranian terrorist networks associated with Khomeini KGB agent, Bahrain Nahidian, escaped prosecution for their role in the 1980 assassination of anti-Khomeini leader, Ali Akbar Tabatabai.

The National Democratic Policy Committee is constantly subject to the illegal dirty tricks of the FBI, particularly against Lyndon LaRouche, the emeritus advisory board chairman of the NDPC, and against his associates in the NCLC.

The FBI's history of irregular activities against the NCLC begins no later than 1968 when the FBI surreptitiously published provocative leaflets against LaRouche's associates. The FBI was at that time aligning itself and, in fact, aiding the faction which was the future leadership of the Weather Underground terrorist organization—the same organization which Judge Webster said was "no cohesive threat" in December 18 television broadcast.

The FBI's questionable illegal activities are the subject of an ongoing lawsuit in Federal court, *LaRouche* v. *Webster*. The citation is in my testimony. Another lawsuit, *LaRouche* v. *NBC et al.*, filed this month in the eastern district of Virginia, will also expose the ongoing illegal operations of the FBI in collusion with NBC's "First Camera" show against *LaRouche* and the NDPC.

Senator **Biden**. The FBI is busy, is it not?

Mr. **Scanlon**. They are very busy, much too busy.

The NDPC and other organizations associated with *LaRouche*, such as the Executive Intelligence Review, have consistently taken strong stands against terrorism and drug trafficking. These organizations have also contributed substantially to the law enforcement understanding of the terrorist problem.

The FBI's continuing irregular operations against organizations and associates of *LaRouche* raise important questions about their competence. But the underlying problem with the FBI, as expressed in the examples given above, is that the FBI has failed to demonstrate a comprehension of the premises upon which intelligence work is carried out by law enforcement agencies in a republic.

The first of these is that there is no contradiction between the rights of U.S. citizens and the security interests of the Nation. The examples of dissimulation and outright lying on the part of Judge Webster's FBI given above represent an institutional problem which has already caused grave harm to the Nation's intelligence capabilities and which will take informed judgment and ruthless determination to resolve.

We need an Attorney General sensitive to the rights of U.S. citizens and to the security interest of the Nation, and these criteria must be paramount in determining who is to be the Attorney General of the United States.

I hope the committee will take these matters into consideration in its deliberation. I thank you for the opportunity to testify, and wish that my written testimony be included in the record of the committee.

Senator BIDEN. It will be included.

[The prepared statement follows:]

DELIVERED BY THE NATIONAL DEMOCRATIC POLICY COMMITTEE
SPOKESMAN, LEO SCANLON

The question of the appointment of Edwin Meese to the position of Attorney General of the United States must be viewed in the context of the issues of urgent national and international concern facing the United States Department of Justice.

The immediate questions facing the Attorney General of the United States are: first, the development of a competent strategy to eradicate terrorism; second, the utilization of all treaties, international sanctions, and forums for the prosecution of Ayatollah Khomeini for crimes against humanity perpetrated in his conduct of Iran-Iraq war, including the conscription and kidnapping of children as combatants; and third, a thorough review and cleanup of the Federal Bureau of Investigation, which is presently engaged in irregular, objectionable, and ille al behavior. At present, the FBI is compromising the ability of U.S. law enforcement to counter terrorism, while conducting illegal operations against bona fide political institutions such as the National Democratic Policy Committee, which is before the Committee today.

First and foremost, the key challenge facing U.S. law enforcement is the interrelated problem of terrorism and drugs. Over the last years, a phenomenon known as "narco-terrorism" has emerged with virulence. It is increasingly clear that the Latin American cocaine and marijuana traffic is inextricably tied to terrorism; and this development now threatens the very governments, such as Colombia, which are battling to eliminate these drug gangs. Because of the incompetence, if not outright corruption of the Federal Bureau of Investigation, the United States has not had an adequate intelligence or policy response to this problem.

Since April 1983, the United States has been hit with the most violent wave of anti-U.S. terrorism in our recent history. In April 1983, our embassy in Beirut was bombed. This was followed by the brutal October 1983 suicide strike against our Marine position in Beirut, resulting in the death of nearly 300 U.S. Marines, which lead to the withdrawal of our peace keeping force and the collapse of our Lebanon policy. In December 1983, the United States Embassy in Kuwait was bombed. In January 1984, Malcolm Kerr, the President of American University in Beirut, was assassinated. January, 1984, Major General Robert G. Ownby, Jr. was assassinated, while the FBI incredibly labelled the murder a "suicide," drawing the astonished disbelief of Pentagon and other intelligence circles. In February 1984, the U.S. representative to the Sinai force, Leamon Hunt, was assassinated in Rome by Red Brigade terrorists operating on behalf of Shi'ite muslim fundamentalists.

Following the Hunt assassination, Lyndon H. LaRouche, Jr., the Chairman Emeritus of the Advisory Board of the National Democratic Policy Committee, issued the following statement:

> "We of the United States have sat too long in the trenches, hoping to defend ourselves against the terrorist enemies' attacks, whenever that enemy might choose to deliver such attacks. In warfare against assassination-waves and other terrorism, as in all warfare, the correct policy is to get moving, keep moving, and attack until we have outflanked the enemy and caught him in his lairs. It is time that the hot pursuit of justice be set into motion against these murderers."

To establish an effective counter-terrorism program, the Attorney General must lead in creating an effective inter-departmental and inter-agency body, similar to Vice President Bush's National Narcotics Border Interdiction System, that will fight internationally against terrorism. For reasons elaborated below, the responsiblity cannot be left with the FBI, which was made the "lead agency" against terrorism as the result of a 1982 classified presidential order.

There are two main reasons for U.S. failure to come to grips with the problem of international terrorism. First, is the State Department's timidity about identifying as terrorist-supporting, and placing sanctions against, such countries as Libya and Iran, which are responsible for training, financing, and recruiting terrorists against the United States and its allies. Second, is the total failure to grasp that most terrorism today emanates from a centralized command of the Soviet KGB, which uses as its primary instrument the Nazi International based in Switzerland. The Nazi/Communist command over terrorism today includes the most serious terrorist operations: Islamic terrorism, which sees former members of Hitlers Middle East intelligence service today act as Soviet agents, as is the case of Algerian radical Ben Bella, whose most important funder is ardent Nazi Swiss Banker Francois Genoud; the West German "peace movement" and Green Party, which, under Moscow's tutelege, has drawn much of its leadership from marginally legal "Volkish" and outrightly banned Neo-Nazi organizations; and separatist groups in Western Europe and Latin America, including the Nazi-inspired Peruvian group, Sendero Luminoso, controlled by Soviet-allied fascist ideologues such as Swiss Nazi Armin Mohler and French Secret Army Organization (OAS) veteran Jacques Soustelle.

A second crucial area of concern for the Attorney General of the United States is the issue of the ongoing outrages against the Law of Nations perpetrated by the Ayatollah Khomeini. We have already discussed the attrocities committed by Khomeini and his hench through their terrorist thus and paramilitary detachments. We must also equally abhor and take appropriate legal action to end the wanton disregard of all norms of international conduct displayed by the Ayatollah in his prosecution of the war against Iraq. Expert testimony, most recently by Col. Ardeshir San'ati, a recent defector from the Iranian army, reveals that violations of the Nuremberg principles are a constant occurence in the Khomeini army. Evidence exists of the use of thousands of children as young as fourteen years old as "human minesweepers," whose act of "martyrdom" paves the way for the Iranian armies advance. Col. San'ati reports that as many as 55,000 children under the age of 18 have been killed in the fighting. A special unit, the

"Bassiji," is comprised solely of children under 18. Eyewitness accounts published in the New York Times report that hundreds of Iranian children and tied together in ropes to restrain those who are frightened and want to turn back. These brainwashed and often drugged youths are marched into Iraqi minefields, chanting "Allah is Great," as their bodies are blown sky-high by land mines. The Attorney General, invoking the principles of the Law of Nations, much play an energetic role in halting these attrocities, not seen since the collapse of Hitler Germany in 1944.

THE PROBLEM OF THE FBI

In a national television broadcast Dec. 18, 1983, FBI Director William Webster shocked the country and caused considerable concern within the U.S. intelligence and law enforcement community by repeatedly insisting that the United States does not have an active terrorism problem.

The following are excerpts from a dicsussion between Webster and reporters George F. Will and David Brinkley during a television broadcast:

> Mr. Will: Are the intelligence signals that you are getting about terrorism directed at the United States up significantly, not up?
>
> Webster: No, not up, but we've had 31 incidents this year, compared with 51 or 2 last year; six deaths compared with seven; two injuries compared with 26. . . . We've had no Middle East terrorist incidents in the United States this year. That doesn't mean that tomorrow we won't have such an incident; but we have not had any this year. And I think that's reasonably significant. . . .
>
> Mr. Brinkley: . . . In recent years, we have had the Red Brigades, the IRA. . . . Puerto Ricans mainly in New York; the PLO. . . Is something like that developing in his country, some kind of gang, underground, or something with violent intentions?
>
> Webster: I don't think so. We — the closest thing we had to

that developed out of the Brink's robbery. Those groups have been largely wrapped up. Very few domestic organizations of any size . . . nothing cohesive at all."

Webster's downplaying of the terrorist threat is consistent with his year-long insistence that the Soviet Union has no influence in the U.S. peace movement. That view conflicts with the findings of both the law enforcement and intelligence agencies oaf the United States and allied countries.

Part of Judge Webster's coverup of the Soviet role in the peace movement is clearly political. In May 1983, a 26-person delegation of Soviet officials made a tour of the United States, launched at a week-long parlay with top U.S. peaceniks closely connected to the political apparatus of Democratic presidential hopeful Walter Mondale. At that meeting, the Soviet delegates, including one identified KGB official, Gen. Mikhail Milstein, gave precise political policy orders to these members of the Mondale political apparat associated with the leadership of the peace movement in the United States. Yet the FBI and Judge Webster continue to coverup the Soviet direction of the peace movement's activities in the United States.

According to eye-witness accounts in Mexico, the FBI was directly deployed to assist the PAN, a fascist, insurrectionary party allied to the Mexican communist party, in elections in Sonora. At home, the FBI has covered up the terrorist networks deployed by the Ayatollah Khomeini -- terrorist networks still in place, targetting anti-Khomeini leaders and U.S. nationals. In particular, Iranian terrorist networks associated with

Khomeini-KGB asset Bahrain Nahidian escaped prosecution for their role in the 1980 assassination of anti-Khomeini leader Ali Akbar Tabatabai.

The National Democratic Policy Committee is constantly subject to the illegal "dirty tricks" of the FBI, particularly against Lyndon LaRouche, the emeritus Advisory Board chairman of the NDPC, and against associates of LaRouche and the NDPC in the National Caucus of Labor Committees (NCLC).

The FBI's history of irregular activities against the NCLC begins no later than 1968, when the FBI surreptitiously published provocative leaflets against LaRouche's associates and the Labor Committee at Columbia University. The FBI was at that time alligning itself -- in terms of attacks chosen -- and, in fact, politically aiding the then enemies of the NCLC. The faction with which the FBI allied was none other than the future leadership of the Weatherunderground terrorist organization -- the same organization which Judge Webster said was "no cohesive threat" in his Dec. 18, 1983 television broadcast.

The FBI's questionable, and illegal, activities are the subject of an ongoing lawsuit in federal court, LaRouche et al. vs. Webster (S.D.N.Y., 75 Civ. 6010).

These activties, exposed some years ago as Cointelpro activities, are still ongoing. Another lawsuit, LaRouche vs. NBC et al. filed this month in the Eastern District of Virginia, will also expose the ongoing illegal operations of the FBI in collusion with NBC television's "First Camera" show against LaRouche and the NDPC.

The NDPC and other organizations associated with LaRouche, such as the Executive Intelligence Review, have consistently taken strong stands against terrorism and drug trafficking. These organizations have also contributed substantially to the law enforcement understanding of the terrorist problem, by providing some of the most important intelligence breakthroughs for combatting terrorism internationally.

The FBI's continuing irregular operations against organizations and associates of LaRouche raise important questions about their competence. The FBI and Judge Webster, in particular, are either dead wrong or deliberately misleading law enforcement on the terrorism problem. This problem must be cleaned up immediately. The crucial question of confirmation of Mr. Meese is whether he is willing, and able, to accomplish this vital task.

Senator Biden. I must say you are absolutely fascinating, Mr. Scanlon. As a matter of fact, it is fascinating. Do you mind if I ask a question, Mr. Chairman?

Senator Simpson. Yes, you can do that; feel free.

Senator Biden. The FBI is in collusion with the Communists, the Fascists, NBC, Walter Mondale and the KGB, is that right?

Mr. Scanlon. Shall I elaborate on how that operates?

Senator Biden. No; I think you did a pretty good job. I just want to make sure I got all the players here. It is just fascinating. How do you feel about sitting with the ACLU?

Mr. Scanlon. Well, they are here. What can I say? We face a real problem in the country, and the problem is that the nature of the networks that are deployed against the country right now—the combined influence of the Nazi International and the Communist International is something that represents the fundamental intelligence problem of the country.

I imagine that you would find it both fascinating and probably something that you are not familiar with, and perhaps at first blush you find absurd. I call your attention to the case that I referenced of the PAN in Mexico. This is a fascist party—historically, openly, avowedly a fascist party which is an electoral alliance with the Communist party of Mexico.

The FBI is documented to have been assisting the PAN in its electoral activities.

The peace movement in Western Europe has a similar profile—anti-American, fascist and pro-Communist.

Senator Biden. Well, I sit on the Intelligence Committee, what would you say if I said the Intelligence Committee thought that you all were a threat? I am not being facetious.

Mr. Scanlon. I know you are not being facetious.

Senator Biden. Let me just say that they said that, which they have not said to me, but let us assume they said that. Would you suggest that we should use all the ruthless determination to expunge your threat to this Republic? I guess it would be all right; would it not?

Mr. Scanlon. What ruthless determination should be used is to determine what is the nature of the threat that is facing the United States, and to define that clearly in the manner that I have indicated.

Senator Biden. I have got you.

Mr. Scanlon. There exists a coordinated effort by the FBI to muddy the waters and to make it impossible for the average citizen or the average observer or even the relatively well-informed or uninformed specialist to make those types of determinations, and it is that behavior on the part of the FBI that represents the most basic threat facing the country today.

Senator Biden. I understand. I just want to make two comments because I do not want the record to go unstated here. I think your testimony is absolutely absurd as it relates to——

Mr. Scanlon. Perhaps you find yourself an ally of Ayatollah Khomeini.

Senator Biden. Let me finish; let me finish.

Senator Simpson. Just a moment, please.

Senator **Biden**. I think it is absurd as it relates to your assertion that General Milstein of the Soviet Union and the KGB is directing Walter Mondale's campaign, No. 1.

Mr. **Scanlon**. It is a matter of fact.

Senator **Biden**. No. 2, I think your assertions about the coverup and complicity of Mr. Webster are equally absurd. And, No. 3 were I not a very well-mannered, well-reasoned Senator, and were it different—were we back in the old schoolyard, I would ask you to go behind the barn because I would love to engage in the ruthless determination that you seem to want us to have.

Mr. **Scanlon**. Well, Senator, if this is the manner of threat that you feel compelled when presented with this type of evidence—I think that is a clear indication of what the nature of the problem is that the country has today, and it is the main reason why we are facing the types of problems that we are.

Senator **Biden**. I agree. I think your articulation of your position is a clear definition of the nature of the threat. I would agree with that.

I have some questions for the other witnesses, if you would like me to continue, or would you rather——

Senator **Simpson**. You go right ahead.

Senator **Biden**. OK; I would like to ask a couple of questions. First of all, to either one of the witnesses, since it was a costatement, the ACLU is not taking a position on whether or not to confirm or not confirm Mr. Meese, and you lay out some very specific—and I assume you did ask permission that the entire statement be put in the record.

Mr. **Shattuck**. We did.

Senator **Biden**. Let me ask you a couple of specific questions. I wonder whether or not sometimes my opposition to Mr. Meese is based upon my opposition to Mr. Meese or my opposition to the President, and I am being blunt about it on the record here.

I am just not sure, to be honest with you, and I wrestle with whether or not Mr. Meese, who may faithfully pursue the policies the President is suggesting—policies which I have sharp disagreement with—whether or not that is sufficient justification for me to vote against Mr. Meese.

My problem is this, John: How do you distinguish Mr. Meese from all the other people in the administration who are simply helping Ronald Reagan implement his civil rights policies?

Would any Presidential nominee be objectionable because of their role in implementing those policies?

Mr. **Shattuck**. Senator Biden, let me take a crack at that question and then see if my colleague, Ms. Spence, would like to amplify it.

Our reason for coming before the committee was not to quarrel with the policies of the Reagan administration as policies, nor to quarrel with the nomination of Mr. Meese. Our reason for coming before the committee was to draw your attention to what we believe—and we could be wrong; we do not claim to be infallible in these matters—to be a real failure to follow the will of the Congress, as expressed in a variety of very specific civil rights statutes, and a failure to follow certain judicial precedents, and beyond that in some instances to take action which undermines those statutory and judicial requirements in the area of civil rights.

Senator BIDEN. Can I be very specific with you, John?

Mr. SHATTUCK. Sure.

Senator BIDEN. I agree completely with your interpretation of the *Bob Jones* case. But the fact of the matter is, if I am going to be the devil's advocate for a minute and argue Mr. Meese's position and the President's position in this case, there was precedent that related to a practice that had been initiated by President Nixon in an administrative way, but there was no Supreme Court decision that said this right existed or did not exist.

Why is it beyond the purview of enforcing the law for an Attorney General, who would move forward with expressing the President's will, the President's will being that Bob Jones University be given a tax exemption—why is it wrong for him to test that in the courts?

Mr. SHATTUCK. Let me start and then defer to Ms. Spence. One of the most important elements in our report is, we think, the demonstration of the number of cases—20, to be precise, major civil rights cases—in which this Department of Justice has switched sides, taken a different side from the side that the Department of Justice was taking in pending litigation, not cases which were initiated by this administration.

A very dramatic example of that is the *Bob Jones* case.

Senator BIDEN. Is that illegal, though?

Mr. SHATTUCK. I think it is a very serious question about the role of the Attorney General. The matters that the U.S. Government is committed to in pending litigation, and then changing that or attacking settled orders and decrees—consent decrees in employment discrimination cases; we saw that, of course, just the other day in the case of the Birmingham employment discrimination case that had been settled, and had been settled at the request of the Department of Justice.

The city of Birmingham was living with a consent decree, and all of a sudden we see the Department of Justice coming in and essentially taking the side of those who were trying to unravel the very decree that the Department was supporting.

Senator BIDEN. I agree with you completely, but let me ask it another way. Let us assume what most of my colleagues on both sides are unwilling to assume. Let us assume that Mr. Mondale becomes President of the United States, and let us assume that he appoints an Attorney General who has as his or her policy the expressed desire to change the position of litigation in process under this Justice Department.

Now, I would hope whoever is elected next would do that. I would hope whoever becomes the next Attorney General would change the position on antitrust legislation, some of which are in train; on civil rights cases, and attempt to reverse the position and direction that this President and this Justice Department are moving.

Would you not be happy with that?

Mr. SHATTUCK. You have put your finger on, I think, a very serious problem here, and that is that this Department of Justice has put that question to, if you will, the next President.

I mean, there is a bipartisan consensus on the enforcement of civil rights statutes and decisions that extends back through a number of administrations. The Civil Rights Commission is a dramatic example of that. And all of a sudden it is shattered, and it is shattered in such a way as to make it very difficult for the next President to continue the bipartisan consensus reflected in the statutes.

I am sorry. I cut off my colleague here, so let me defer to her.

Ms. SPENCE. Senator, two points. On the issue of the question of whether it is illegal—if, by that, you mean can we cite a Supreme Court opinion or some court of appeals opinion about the narrow legal question that may be presented here, we did a fair amount of review of legal precedent and court decisions that could bear on this.

We think the reason we found the little precedent that is precisely on point is because there has not been a situation in the past where there was such a pattern of Justice Department behavior that seemed, on the face of it, to be inconsistent with statutes and judicial mandates and thus the issue had not been raised very closely.

There have been court decisions on the question of the extent to which the executive officials must follow the law. There is a decision having to do with what was then the Department of Health, Education, and Welfare that addresses the issue and makes clear that law enforcement officials have a duty not only to enforce the law, but to avoid engaging in any support of illegality.

Senator BIDEN. Again, that is the issue. Is there support of illegality here?

Ms. SPENCE. What we believe the report details is that there are severe gaps between congressional mandates and judicial mandates, and we specify them, and the actions of the Department.

So, for example, when Congress has said, as it has on a number of occasions, that there are certain—well, let me give a more immediate example. Congress enacted a law in 1980 to give the Attorney General specific authority with respect to the rights of people confined in institutions.

Since that act was signed into law in mid-1980, there was little time for the previous administration to do anything under that particular authority.

So, we have as our record basically the record of this administration. The legislative history is clear. I believe you served on this committee during that process. We have looked very closely at the statute and at the legislative history. It is all very recent. There are people who were involved in it who are still here in Washington. We have talked to them.

We have documented that the Justice Department has been giving explicit aid to the defendants in some of that litigation. Now, the question whether there is a legal action pending that will resolve the somewhat narrow legal question of is that illegal has not been presented in any court case I am aware of. But the inconsistency between what they have done in at least five pieces of litigation where we have talked to counsel, where we have read the pleadings, where we have read court opinion suggests that there is a serious legal question for the Congress about whether the administration is doing what Congress in 1980 said it was to do with that litigating authority.

Mr. **Shattuck**. Senator, this is a law enforcement issue, and let me give a law enforcement analogy, because I think we should be very specific about this. Suppose I were a district attorney and I did not happen to like the way the statute regarding criminal fraud was written because I did not like one of the elements that was put in there by the Congress that said I had to prove specific intent in order to get someone under the criminal fraud statute. Suppose I did not like that, and therefore, whenever I was in court with regard to fraud prosecutions, I tried to get that element changed, to get judges on my side. Or in some extreme instances I might even decide in many of them not to file any kind of fraud prosecution because I did not like the way the Congress had defined the crime.

I think that is what we have in a number of critical civil rights statutory areas. Under the Voting Rights Act, we have situations where the Department has attempted to remove the preclearance burden of proof from local jurisdictions in terms of the way in which the Congress wanted to have that in section five of the Voting Rights Act. They have argued that in court. I do not think that is the role of the Department of Justice, to argue that the Congress really did not intend something that was very specifically intended on the face. And they have been repudiated by the courts. We have virtually, as far as I know, one decision in the Supreme Court of the United States where this Department of Justice has prevailed on an interpretation of statutory or judicial precedent in the area of civil rights. And that was the *Grove City* case, which has been discussed in the course of the hearings.

It is a law enforcement question. It is ultimately a question of whether they are enforcing the law. It is our position that they are not.

Senator **Biden**. The school desegregation cases, the real question there is whether or not they have moved to intent with more dispatch than the Supreme Court appears to be moving or have moved. But I would argue that although they may not have much of a consensus in the Congress, the consensus is clearly on the side of this administration's interpretation, is it not?

Ms. **Spence**. Senator, Congressman Conyers, among others, mentioned the *Seattle* case. The *Seattle* case is one of the more specific examples of where you can go back to an explicit statute and ask the question whether what Congress presumably still intends, the statute has not been amended in the years since it was first enacted, or what that statute makes clear is being done. Putting aside congressional determinations about what it believes ought to be the priority of remedies in choosing court ordered remedies for segregation problems in the schools, voluntary efforts are to be given a certain kind of deference. And Congress was very clear, having enumerated in another part of the same law, the priority of remedies. They then went on to say, in a separate section to make it clear, that voluntary efforts do not have to conform to this list of priorities.

Putting aside for a moment, however, you feel about them switching sides, but look at the issue of whether the administration is acting consistent with that existing law in aggressively seeking out—by that I mean attacking in a situation where they were already on the other side—attacking a community's voluntary effort to address an admitted and acknowledged problem with school segregation.

Mr. **Shattuck**. Senator, I would add that that, too, as Mr. Spence was outlining it to you, is a serious law enforcement question. The unsettling of law in local communities, law which involves very serious tugs and pulls on both sides in the area of civil rights, is a real law enforcement breakdown. When we get voluntary school desegregation and employment discrimination decrees that are attacked by the Department of Justice and throw communities into a tizzy to try to figure out where they stand after the Department comes in when it told them in the first instance that it should go ahead and solve the case in this way and then it comes in and attacks them—I mean, the city of Birmingham, the city of Detroit, the city of Seattle, the city of St. Louis. You can go across the country, Senator, and you find this——

Senator **Biden**. I think you make a valid point, but they argue that really in fact these are not voluntary, that in fact they are threats. That is, if you do not come up with a plan, we, the administration, the last Justice Department, interpreting the law the way we do, we are going to go to court to take you, the community, to court. And we will suggest as a remedy a forced remedy that encompasses a number of things the community may not want. Then the community sits down.

Let me put it another way. I do not know any community that has voluntarily sat down before there was any threat from the Justice Department to do something. I do not know any community that voluntarily sat down and said: you know, we've got a problem. And what we're going to do is, we are going to enter into a voluntary decree here.

The way it works is the Justice Department says: "You are in trouble, you have got a problem. And we are going to take you to court. But we will not take you to court or we will withhold taking you to court if you come up with a plan that meets the following standards. And then we call it voluntary."

What this administration says is the premise from which the last administration was working was faulty. That the law does not require what the last administration said it requires. Ergo, the voluntary plan which the community entered into, which was not in fact voluntary but was coerced under threat of prosecution, was in fact something that they need not have done.

Now, whether we agree or disagree with that, it is not quite like them coming into a community where there was clearly a purely spontaneous, voluntary proposal that came from the community.

Ms. **Spence**. But, Senator, the law enforcement analogy, I think, is helpful in that instance, too. You know, you might say that, if it were not against the law to engage in tax fraud, that an awful lot of people would do it. I mean, of course there is a coercive element in the existence of the statute.

Senator **Biden**. It is the interpretation of law. For example, the law is clear on taxes. It is not always clear, but it is fairly clear on taxes. You must admit that there is a good deal of uncertainty in the law in the courts on the question of whether or not you can go beyond the intent to determine whether or not there has been——

Ms. SPENCE. Senator, this is difficult since you serve on the committee that has developed many of these statutes. But I think that there are a number of instances. If you mean by lack of clarity disagreement among the Federal courts that have looked at these issues, there is a great deal of clarity on many of the points with which the administration has taken issue. I think that there are explicit—I do not think, I know that there are explicit effects standards in some laws. Granted, in the fair housing area the effects standard is not explicit in the statute. But there is not any prevailing legal opinion contrary, in the sense that there is no prevailing law on the other side with respect to whether title VIII has an intent standard in it. As Congressman Conyers and others have pointed out, Congress very recently had a chance to chew over this issue. In the two committee reports—the bill never was enacted—you look at the two committee reports, and they both make what I think we can call clear that that is what Title VIII is about. Now, in that instance, I think, it is drawing a legal line and drawing a legal nicety that has been attacked in other areas, that is not in fact appropriate. There is a great deal of clarity on a great deal of what our report, at least, talks about. And we took great pains to make all the claims with respect to the state of the law explicit and referenced them to judicial opinions, statutes, and clear legislative intent.

Mr. SHATTUCK. Senator, let me just amplify that very briefly by saying that the last four administrations prior to this one have—I mean, I think we can go back further if we want, but it is not terriby useful—have recognized the value of settling the law in this area, of settling it, of settling civil rights disputes, the great crisis of our country that nobody needs to amplify in these hearings because I would assume that it is well understood, of historic and dangerous discrimination.

It has been settled through a process. Sure, the Department of Justice has been coercive to a certain extent in getting those issues to be settled at the local level. The Supreme Court and the Congress have been coercive to a certain extent. But there is a direction to all of that that we see going through the four administrations, two of them Democratic, two of them Republican, until we hit this one. When we hit this one, the brakes are put on, and a reversal is made. Communities are thrown into a turmoil. And there is a serious question of civil rights law enforcement at the local level.

It may well be that some communities have not reached that kind of voluntary determination that you say in the ideal world we want to see. Of course, we do. But that is not the way the real world works, and I think we all understand that.

Senator BIDEN. Let me tell you, I hope it is obvious by now my concern. I think there is a possibility that Mr. Reagan may be reelected. We will have 8 years of clearly settled law and policy. It will be clearly set out. I have no doubt what is going to happen in the next 4 years if Ronald Reagan is elected and with Mr. Meese as Attorney General. Communities will have a clearly defined signal as to whether or not they should or should not engage in voluntary orders. We will have 8 consistent years of policy.

And there may be a change in the Supreme Court of the United States, where President Reagan will in fact be able to appoint many of the members of the Supreme Court. That is a distinct possibility. So, we may also have constitutional law that is such that is very different than the way in which I think the Constitution should be applied as regards civil rights and civil liberties.

My concern is that if in 1989 there is a new President who shares my view on civil rights, which is more consistent with what I understand to be your views, and on civil liberties, which I, quite frankly, am even more worried about, if in fact that happens and Joe Biden says to that President or if I were Attorney General or President, I would want very much to try to reverse the reversal. Now, would I be, by taking the position that you are suggesting we look at, if I took the position and the rationale to vote against Mr. Meese because of what you have stated here in terms of their departure from clearly defined law, as you outlined it here, would I be then, to be intellectually consistent, prohibiting myself as President from seeking through my Attorney General to depart from what will at that point possibly be clearly defined law, which I would view as very restrictive and very repressive?

Mr. **Shattuck**. Senator, if you were placed in that dilemma, either as the occupant of the White House or as someone advising the occupant of the White House, there are statutes on the books, and those statutes will presumably survive that period of time that you are talking about. The Congress was clear in its enactment of those statutes. We say that this administration has not followed what the Congress has asked in the enactment of those statutes. The same thing is true of a number of Supreme Court decisions, all of which stand to this day, the ones that we have been referring to. There is only one case, as I said, where the administration has actually prevailed in the Supreme Court. So, that is the question. And I think it is the question that needs to be put to Mr. Meese. We have not used his name in the context of these hearings because we are not taking a position on his nomination.

Senator **Biden**. I understand. But beyond Mr. Meese is the question I have got to put to me. Let us assume Mr. Meese says that, no, I think it is totally appropriate to do what we are doing. Then the question comes down to me: what do I do, assuming I am here 2 years from now, when in fact there is a fundamental reversal, which I predict will happen, of civil rights and civil liberties law in this country, consistent with where the President wants them to go? Am I then as a Senator supporting a Democratic President or a Republican President with a different view, am I then one who will be arguing that my proactive Attorney General, one who I want to aggressively seek a change in the then existing law, will I then be acting inconsistently?

Mr. **Shattuck**. No.

Ms. **Spence**. Senator, there is a very good example from history that relates to the civil rights area, which I think suggests that the answer is there is really not such a great fear of the problem that you raise. Had the Solicitor General of the United States, representing, of course, the Justice Department not participated in the

Brown v. *Board of Education* decision, it is entirely possible there would have been a different outcome. And we would be back with *Plessey* v. *Fergusson*, and we would have stayed there. The Justice Department's position in that case was quite different on an important point, that is to say, whether the Supreme Court should explicitly overturn *Plessey* v. *Fergusson*, than the position of the private civil rights litigants working on it.

It is interesting to look back at the history of that case and to realize that one of the reasons the Justice Department took such an important role in that case had to do apparently—or at least the commentators think—with the change of administration that occurred in the wake of the 1952 election.

I think the answer to your question is in two parts.

One, as a legislator, you have the same capacity you have now to deal with the legislative arena, in which some of this should be properly raised——

Senator BIDEN. I understand that.

Ms. SPENCE. Second, with respect to the Supreme Court, I do not think anything we have written or said, certainly nothing that I think that those of us I have talked to in the ACLU believe, suggests that the Justice Department should not be free to properly argue certain legal positions to the Supreme Court or any other court to the extent that those arguments are consistent with the statutory mandates that the Justice Department derives from the legislative branch and from the courts. What we are asking is, are they over that line?

Senator BIDEN. I will make you a bet. If there is a reelection of the present administration, the *Keyes* decision will be clearly distinguished and overturned and that there will be a clear distinction overwhelmingly voted for by the U.S. Congress that is consistent with overturning the *Keyes* decision as it relates to intent. I will make you that bet.

And then I do not want you telling me, assuming we are all here, that, when we have a new Attorney General and a new administration, that they cannot aggressively attack that position. I assume you would not say that.

You are saying to me now—I want it on the record because I want to know. If in fact I am right, if *Keyes* is overturned, or distinguished in a way that clearly makes it understood that intent is required and if the Congress follows legislative suit with regard to changing the various laws to reflect that, are you saying to me that, when there is a new Attorney General in the year 1989, that you have got to stick with congressional intent and stick with the ruling of the Court at that time?

Mr. SHATTUCK. Senator, it depends entirely on the forum. If you are arguing to the Congress of the United States as the new President or the new Attorney General that you believe that the standard should be changed, and if the Supreme Court has not held that the intent standard is constitutionally required, you are completely within your authority to do so.

Senator BIDEN. But how about if the Supreme Court has held that it is constitutionally required?

Mr. SHATTUCK. If it is held that it is constitutionally required, I mean, if I were a good defense lawyer for the person who was claiming that you have got to prove intent, I would say that is all that is necessary, if it is con——

Senator BIDEN. No, I mean as President or as the Attorney General.

This is not just some little game I am playing here. The problem we have here is I am worried we are locking ourselves into a position that we are going to end up swallowing. We are going to have it shoved down our throats.

I think, quite frankly, you, in an editorial sense, you, have been wrong in terms of what you thought would happen thus far in terms of this administration and in terms of the movement of legislative intent, and in terms of what the Court is likely to do.

Did you predict the *Grove City* outcome? Did that not come as a little surprise to you? Well, hang on, there are a lot more surprises coming. And you watch what happens when this Court is changed, which it will be, radically changed over the next years.

Senator MATHIAS. You are stretching the powers of the U.S. Senate now, Senator.

Senator BIDEN. I am being very serious. I am worried about it. I am worried, if we apply a standard here that says—because I am one of those people who believe that there is some requirement of foolish consistency in terms of applying standards.

Mr. SHATTUCK. Senator, with all due respect, and I do sense the same concerns that you have, you are proposing that those of us who are trying to keep the existing civil rights law alive proclaim this the dark ages and go back to some kind of a cave and not——

Senator BIDEN. Not at all.

Mr. SHATTUCK [continuing]. And not continue, which I think we must do and will do through those next 4 years whoever is occupying the White House, to state what the law is and what the Congress intended and what the Supreme Court has held——

Senator BIDEN. That is hypothetical.

Regarding, the *Grove City* case, what if in January President Hart or Mondale is sworn in, and he goes back and finds someone along the lines of a Clark, a very, very proactive Attorney General on civil rights. And the President says, I think that *Grove City* decision was wrong, it should not stand. I want to challenge it the next time anything like it comes before us. I want us to aggressively make the opposite case.

Is he acting within his legal rights to do that?

Ms. SPENCE. I think, put that way, there is a question of whether he would be. But under oath, who wants to answer a question like that, really?

Senator BIDEN. But that is what the question is.

Ms. SPENCE. The question, I think, actually, if that is your example, is that the President in that situation would have the option of endorsing a legislative solution.

Senator BIDEN. But he would not get a legislative solution.

Ms. SPENCE. Well, you might if you had the President supporting it.

Senator BIDEN. Let us assume we did and he missed. Let us assume he came to the Congress and he did not get it. Then is he foreclosed from fighting the issue?

Ms. SPENCE. I think he is foreclosed from telling a court that that is not the law, which I think is the analogy to what we are saying has happened. I think he is foreclosed from suggesting that, though the law requires him to enforce the statute a certain way, that he is going to enforce it in a different way. I think he would be foreclosed from redefining his enforcement procedures so that he was carrying out the law in a manner different from what the court decision dictated.

That is a risk that you run in any event if you are going to rely on the rule of law in the first place. Sometimes the law is going to be one you wish were different.

Senator BIDEN. That is right, but—I do not want to belabor it any longer. I yield.

The CHAIRMAN. The distinguished Senator from Maryland.

Senator MATHIAS. Thank you, Mr. Chairman.

The Senator from Delaware is entirely proper in his examination of all of the contingencies that may occur years ahead. I think that that is an interesting line of speculation. But I would like to redress the balance a little bit by just expressing the fervent wish for the health and the happiness and the longevity of every member of the Supreme Court.

Senator BIDEN. I share in that, Senator. Maybe I should not have extended it to the Court at this point, but I think the *Grove City* case is one case in point. I question whether the ACLU is prepared to live with the *Grove City* case as it is, assuming that there is not a legislative remedy that we are able to come up with and that they would not encourage the next President of the United States to challenge it and the next Attorney General to challenge it.

I understand now why we differ. I think he should and could challenge. I think there are other grounds upon which to disagree with Mr. Meese.

If you will indulge me 30 more seconds. Mr. Chairman, on a separate matter. I know you want to close these hearings out today. I have been polling my colleagues—not that we can prevent that from occurring. I have been polling my colleagues on the Democratic side as to whether or not we would have any desire to bring back Mr. Meese tonight or tomorrow.

I would like to suggest, if I may, Mr. Chairman, that, although we are not asking that Mr. Meese be brought back now and probably will not ask it at any time in the future, that, before you close the hearings out today, since I am about to leave myself, that you in fact, at the request of Senator Kennedy, myself, and others, leave the record open for additional questions that could be submitted in writing and comments until the end of the week.

The CHAIRMAN. Well, Senator, we intended to close the entire hearing today. Out of respect for you, as ranking member, we will keep the record open until tomorrow, or we might keep it open through Thursday, until Friday, if it would not interfere with proceeding with the nomination when we have the next meeting.

Senator BIDEN. This is what you call bargaining.

As you know, Mr. Chairman, at least I am under the impression that it would require a waiver to bring up Mr. Meese on Thursday. I am not suggesting we will not. But I am suggesting that I do not know what my colleagues will wish to do on that score.

Why do we not do this? Why do we not leave it open until Thursday? I will leave an open mind as to whether or not we will object to Mr. Meese's nomination being brought up until Thursday. And maybe you and I can talk between now and then. How about that?

Senator MATHIAS. Why do you not consider that while I ask a few questions?

Senator BIDEN. That is a good idea.

The CHAIRMAN. I think we can leave it open until Thursday. We just want to get the nomination on the agenda for Friday. I want to be perfectly candid with the Senator.

Senator MATHIAS. While you are conferring, I have some brief questions.

The CHAIRMAN. Go ahead.

Senator MATHIAS. As Mr. Shattuck mentioned, all attorneys general have exercised prosecutorial discretion in the enforcement of Federal law. It seems to me that that is one of the critical statements that has been made in this entire hearing. It underscores a conversation that I had with a very distinguished Federal judge who had served on the district court, who had served on the circuit court, who had served in high positions in the executive branch of Government, who I suspect may have been a member of the ACLU. If he was not, he was certainly eligible. He once said to me in the midst of one of the fights that went on in this committee over appointments to the Supreme Court—I want to try to quote him as nearly accurately as I can. He said: it does not matter as much who goes on the Court as it does who is Attorney General. That is because Justices on the Court can only decide the cases that are brought before them, but the person who decides what goes to the Court is the Attorney General of the United States. Therefore, that is where the critical decisions are made.

Whether or not you agree with that learned judge, I think the point he makes underscores the importance of the decision this Committee will make and that the Senate will make in reviewing the qualifications of Edwin Meese to be Attorney General. So, there can be no underestimation of the importance of this decision.

In making your statement that all attorneys general have exercised prosecutorial discretion, do you think that that discretion should not extend to decisions as to which evidentiary presumptions the United States should take advantage of in civil rights cases?

Mr. SHATTUCK. Senator, I think this gets back much into the area that we were in in Senator Biden's questions. I would use your question as an opportunity to amplify and clarify our answer to him about the *Grove City* case.

The area of prosecutorial discretion is very complicated; there is no question about it. It is essential that there be an area of prosecutorial discretion, or there will be a total breakdown in law enforcement. It is not possible to prosecute every single case that comes along.

Senator MATHIAS. As I understand your position, and as you say in page 3 of your statement, that "this assault on civil rights law enforcement can be attributed neither to the exercise of prosecutorial discretion of the Attorney General nor to policy disputes about appropriate civil rights remedies."

Mr. **Shattuck**. That is right. And what I was getting to is where the Congress or the Supreme Court has specified as a matter of statutory or constitutional law, or statutory interpretation, that certain presumptions or certain burdens of proof are to be used in prosecuting cases, it is true. I do not think that that is an appropriate area for prosecutorial discretion. It may be entirely appropriate for the Attorney General or any of his designates to make a decision about a particular case or even a group of cases. But to decide not to follow particular statutory or judicial evidentiary requirements, especially if they arise to constitutional dimensions, would be an inappropriate exercise of prosecutorial discretion.

That does not mean that the Attorney General could not argue to the Supreme Court in a subsequent *Grove City* case on title IX that the Congress did not intend what the Supreme Court in the *Grove City* case stated that the Congress intended. It would be entirely appropriate for the next Attorney General in a new case to say we are going to challenge the *Grove City* ruling, but we are going to challenge it in a very appropriate and prosecutorially discreet manner. We are going to say the Congress did not intend what the court ruled. We are looking at all of the legislative history. And we are asking the court to reconsider based upon the congressional intent as we have read it.

That would be an appropriate exercise of prosecutorial discretion. But not in a case that is pending, not to take a case which has been decided, where the rights of the parties are being tugged and pulled by some policy decisions that are being made in the Department of Justice. Take a new case. Take a look at the statutes and what the Constitution requires. And then it is appropriate for the Attorney General to say we want to change what the last Attorney General did.

Senator **Mathias**. Not to switch.

Mr. **Shattuck**. Right.

Senator **Mathias**. What about the choice of remedies to be sought in such cases?

Mr. **Shattuck**. I think the Supreme Court—let us take the area of school desegregation—has been very clear. There is a broad area of discretion for the choice of remedies. But the Court has also said that there are some circumstances where the only remedy that is appropriate to particular facts is a particular remedy. In the instance of several Supreme Court decisions on school desegregation, the remedy of busing was determined to be the only appropriate remedy to solve the problem.

So, sure, there is a broad area of discretion. But it does not mean saying we are never going to use a remedy which the Court has said in some particular circumstances may be the only appropriate remedy.

Senator **Mathias**. Just one last word on the *Grove City* case. Did you read the letter submitted in testimony yesterday written by Secretary Bell?

Ms. **Spence**. Yes.

Senator **Mathias**. What comment would you have on that letter, speaking of prosecutorial discretion?

Ms. **Spence**. Having read it, there are questions that it raises about the chronology and how it fits into what was going on about the decision. But it certainly seems to indicate with respect to this hearing that Mr. Meese was directly involved in an administrative decision that led apparently to some of what the administration later did with respect to *Grove City*. The letter apparently preceded the administration's filing of a brief in the third circuit. And I do not really recall precisely what that brief said. But it seemed to me at least that the letter raises a great many questions about the nature and the propriety of some of what was under consideration in Mr. Meese's office. Assuming that what the letter suggests went on in his office is true, I would certainly want to know what Mr. Meese had to say about it. I do not recall myself or from my notes how he answered the question that he got about what his involvement in *Grove City* was.

Senator MATHIAS. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. I just want to make a statement now. We have been on this hearing for 4 days. I was hoping to finish it up Friday night and would have stayed Friday night and Saturday, if necessary, to finish this hearing because it is a Cabinet member. It should not be postponed, in the interest of the public. Those who are against him can vote against him. The President is entitled to have action on his Cabinet appointee. So, we came back Monday and Tuesday. We have been here 2 more days.

I intended to go on last night, but Senator Metzenbaum wanted to take his wife to a show; and I accommodated him there. Senator Kennedy could not be here yesterday morning, so we adjourned the hearing until lunch so he could be here. We have tried to accommodate those who were most interested in opposing Mr. Meese in every way we can. But there comes a time when we have to bring this thing to a close.

We gave notice that we would close tonight. Now there is some question as to whether they want to bring Mr. Meese back. If there is anybody here who wants to bring Mr. Meese back, speak up now; and we will go and get him and have him here in the next 30 minutes.

We are not going to just continue these hearings indefinitely and have some come one or two or then others come one or two. I want the record to show that there are only three Senators here. Where are the rest of them? If they are opposed to Mr. Meese, why are they not here? Let them speak up. Where are those who would oppose Mr. Meese? Do they want him brought back tonight? We will bring him back tonight if they want him, but let them speak up now.

Senator BIDEN. Mr. Chairman, running the risk of being one of the obstinate members of the committee, I am inclined to say bring him back tonight; but I realize the point the Senator is making. It is difficult to argue with the logic of his position, that we are not prepared at this moment to do that. But I would point out to you that there are certain documents that have been requested by Senator Kennedy which have been received today. I am told by his staff that he has not had fully an opportunity to review them, and they raise additional questions.

There was a question raised today by Senator Metzenbaum with Senator Laxalt as to whether or not Mr. Fielding should be here or whether or not Mr. Fielding's written interrogatories would be sufficient. I understood that Mr. Metzenbaum suggested he would like overnight to consider the offer.

For the record, without getting at this late hour into an argument with my good friend, the chairman, I would like to just record that I would not like to see the hearings closed. I realize that it is within the chairman's power to do that. It is within my power to challenge it. It is then within his power to ask for a vote. And I learned how to count. So, there is no sense in going through that exercise. But I just want the record to reflect that I think it would be wiser to keep it open until tomorrow at noon or thereabouts.

I do not think you are going to have anybody asking for Mr. Meese back. I do not think you are going to have any problem. I think we will work all of this out. But I am afraid what happens is, as you know better than I, Mr. Chairman, that, although you have been incredibly patient, I acknowledge, that to move now may very well set in motion a series of events in this Committee that we have all seen happen before. It ends up with us getting into a dog fight, which will probably be avoided just by saying we will close it out at 12 o'clock tomorrow. But that is the chairman's decision. I understand that. That would be my recommendation, but it is up to the chairman, obviously.

The CHAIRMAN. I understand that Senator Metzenbaum has agreed to prepare interrogatories for Mr. Meese and that they will be signed. I believe that they have agreed to that.

Senator BIDEN. I guess what we are talking about, Mr. Chairman, is just practical politics. I do not think you lose anything by letting it go to 12 o'clock. And I think you may avoid protracted fights in the committee. I do not know that there will be any, but I found around this place that people in fact respond in a negative way more as a consequence of their feelings being hurt than they do to the substance of the argument. And what I am a little concerned about is just making the thing work. But it is up to you. You make the decision. I think we should go over to tomorrow.

The CHAIRMAN. I think we have been very patient and very reasonable, and the hearing is going to be closed tonight. I announced that earlier. Everybody knew about it. Senator Metzenbaum has agreed to propound four interrogatories for Mr. Fielding, and they will be answered.

We will do this. We will keep the record open. If there are any more interrogatories that they want answered, they can submit those by 12 o'clock tomorrow. And they can be answered tomorrow or by the next day.

Senator BIDEN. Does that include all people, including Mr. Meese, the witness, interrogatories to Mr. Meese as well?

The CHAIRMAN. We are through with Mr. Meese.

Senator BIDEN. I mean——

The CHAIRMAN. That does not include him because——

Senator BIDEN. I would ask for Mr. Meese to be brought back tonight then.

The CHAIRMAN. All right, we will get him.

The panel is excused. Thank you for coming.

Mr. SHATTUCK. Thank you, Mr. Chairman.

[Short recess taken.]

The CHAIRMAN. The committee will come to order.

I propounded the question that if anybody had any further questions for Mr. Meese, that we are prepared to go forward. Senator Biden has suggested in lieu of that—well, he first suggested that Mr. Meese come back tonight. Now, we have talked to Mr. Meese. Senator Biden suggested to Mr. Meese in lieu of bringing him back tonight that questions be prepared and submitted to him for answer for the record by 12 o'clock tomorrow. Mr. Meese has agreed to that. So, anyone who has questions to ask Mr. Meese will get them to Mr. Meese by 12 o'clock tomorrow.

Senator MATHIAS. May I make a suggestion? So that the record may reflect the interrogatories, they should be delivered to the committee by noon tomorrow. The committee would then transmit them to Mr. Meese.

The CHAIRMAN. I think that is all right. Anyone who has questions can deliver these questions to the Judiciary Committee, to Mr. Short by 12 o'clock tomorrow. He will deliver them to Mr. Meese. He will answer them that day or the following day. So, it will not interfere with the meeting on Thursday.

Senator BIDEN. Mr. Chairman, I want to thank you for your cooperation and confirm what you said. I spoke to Mr. Meese. Again, given the choice of coming back or answering the questions, which I think is preferable, the questions be in writing, he thought that was a preferable way to go, too. I think this can be expeditiously resolved.

Thank you for your consideration. I hope you have a good dinner.

The CHAIRMAN. Again we have leaned over backwards, Senator, to try to accommodate you.

Senator BIDEN. You are always leaning over backwards, I want to tell you. You are all right, Mr. Chairman.

The CHAIRMAN. Without objection, we will insert that.

[Material referred to follows:].

7 MAR 1984 .

Attachment A

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

STROM THURMOND, S.C., CHAIRMAN

CHARLES McC. MATHIAS, JR., MD
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CHARLES E. GRASSLEY, IOWA
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ARLEN SPECTER, PA

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ROBERT C. BYRD, W. VA
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DENNIS DeCONCINI, ARIZ
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SUBCOMMITTEE ON JUVENILE JUSTICE
ARLEN SPECTER, PA., CHAIRMAN

JEREMIAH DENTON, ALA.
CHARLES McC. MATHIAS, JR., MD.

HOWARD M. METZENBAUM, OHIO
EDWARD M. KENNEDY, MASS

March 7, 1984

Honorable Edwin Meese, III
Counselor to the President
The White House
Washington, D.C. 20500

Dear Mr. Meese:

Time considerations at your confirmation hearings before the Senate Committee on the Judiciary prevented me from discussing the following three questions with you:

(1) I understand that the Genocide Convention has been approved by the State Department and forwarded to the Department of Justice for consideration there. What plans have been made for consideration by the Department concerning the Genocide Convention? Has a timetable for consideration been set? If you are confirmed as Attorney General, what position would you recommend that the Department make with respect to ratification of the Genocide Convention?

(2) In the wake of the Supreme Court's ruling in the Grove City College case, Assistant Attorney General William Bradford Reynolds has been quoted as having no "personal problem with Congress changing the law if it wants to" (NEW YORK TIMES, March 3, 1984). If confirmed as Attorney General, what position would you take with respect to legislation which sought to alter the result in the Grove City College case by providing that the receipt of any Federal financial assistance explicitly triggers institution-wide coverage under Title IX of the Education Amendments of 1972?

(3) If confirmed as Attorney General, would you be willing to take the lead (perhaps working with the Civil Rights Commission) in developing affirmative action guidelines incorporating race and sex as relevant factors to be considered in hiring decisions?

I would appreciate receiving your thoughts on these three matters.

Sincerely,

Arlen Specter

RESPONSE OF EDWIN MEESE
TO
SENATOR ARLEN SPECTER

1. It is my understanding that the Genocide Convention was recently forwarded to the Department of Justice by the State Department for consideration not only by the Department of Justice but as a part of the whole process of formulating the position of the Administration.

I have not had an opportunity to study, analyze or discuss this matter in detail with the appropriate officials of the Department of Justice. I have, therefore, not decided what my position will be on this important matter. It is a subject which I expect to address promptly if I am confirmed to be Attorney General. I am aware of no other timetable relative to this matter.

2. Before I could expressly commit to supporting any proposed amendment of Title IX, I would, of course, have to review and analyze the specific legislative proposal. I do believe, however, that Congress is the appropriate body to balance the different policy concerns that are presented by those desirous of institution-wide coverage under Title IX, on the one hand, and those troubled by undue Federal intrusiveness into private educational matters, on the other hand. As a general matter, it seems to me that Congress can appropriately impose conditions on a grant of Federal funds as long as it acts responsibly in doing so. If, after weighing all competing considerations, Congress were to decide that Title IX coverage should be institutional, that is certainly an available option open to it. Once the particulars of legislative proposals become known, Senator, I can respond to your question more definitively, and I will be happy to do so.

3. If confirmed as Attorney General, I would be eager to take the lead, working with the Civil Rights Commission, as well as the EEOC and OFCCP, in developing affirmative action guidelines to be used by the Federal Government both in its enforcement activities and in its own employment practices. I would vigorously seek to coordinate the development of affirmative action policies calling for enhanced recruitment efforts and other positive outreach measures to attract minorities and women into the pool of qualified applicants for employment. Of course, the Administration's principled opposition to employment quotas and other preferential devices based on race or sex is well known and any development of affirmative action guidelines would, naturally, conform to those policies.

Attachment B

QUESTIONS WERE SUBMITTED ON BEHALF OF SENATOR LEVIN

1.) COULD YOU GIVE US THE SUBSTANCE AND DATES OF ALL CONVERSATIONS YOU HAD WITH JAMES BAKER OR BILL CASEY RELATIVE TO THE FACT THAT, OR THE MANNER IN WHICH, PRESIDENT CARTER'S BRIEFING PRAPERS ENDED UP IN THE REAGAN CAMPAIGN?

2.) PLEASE STATE WHAT PERSONAL KNOWLEDGE YOU HAVE RELATIVE TO PRESIDENT CARTER'S PAPERS BEING PHYSICALLY AVAILABLE TO THE REAGAN CAMPAIGN.

RESPONSES OF EDWIN MEESE III TO QUESTIONS
SUBMITTED BY SENATOR CARL LEVIN

#1. I discussed this matter with William Casey approximately 30 to 60 days after this matter was first reported in the press and subsequently on one or two other occasions, the dates of which I do not recall. To the best of my recollection, Mr. Casey indicated that he did not recall seeing the referenced documents. Mr. Casey opined that had he seen them, he would have made a note of it and discussed it with others because he would have suspected that someone was trying to "set up" the Reagan-Bush campaign. I have had very general conversations with James A. Baker, III concerning this subject. I do not recall the dates of such conversations.

#2. I have no knowledge of any effort by the 1980 Regan-Bush presidential campaign, or anybody associated with that campaign, to obtain from the Carter Administration, or the 1980 Carter-Mondale presidential campaign, any private materials or information.

Attachment C

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

STROM THURMOND, S.C., CHAIRMAN
CHARLES McC. MATHIAS, JR., MD.
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SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE
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LYNDA L. NERSESIAN, CHIEF COUNSEL AND STAFF DIRECTOR
ALICE R. MULDER, GENERAL COUNSEL

Submission of Additional Questions to
Mr. Edwin Meese by Senator Charles E. Grassley

1. As chairman of the Subcommittee on Aging, Labor and Human Resources Committee, I conducted a hearing on the extent of victims assistance available for older Americans. The Subcommittee examined the report of the President's Task Force on Victims of Crime which concluded that Congress should enact legislation to provide federal funding to assist state crime victim compensation programs and victim/witness assistance agencies. In order to implement these recommendations, I along with my colleague from Pennsylvania, Senator Heinz, introduced a bill on March 8, 1983, S. 704, the Federal Crime Victim Compensation Act.

   President Reagan, in his State of the Union Message, stated that it is time to consider the rights of victims. Does the Administration have a proposal for Congress to consider or does a time frame exist that governs when a bill will be submitted by the Administration?

2. The Department of Justice has indicated to third persons that it supports S. 462, amending the Hobbs Act to include acts of violence by union officials within federal jurisdiction. There have been reports however, that the White House would bow to election pressures and oppose the bill, at least privately. Does this Administration favor or oppose bringing violence by union members within the jurisdiction of the federal government by amending the Hobbs Act through S. 462 or any other measure?

3. There is no question regarding President Reagan's views on discrimination in medical treatment for handicapped newborns. Will you continue pursuing legal remedies in the instance of denial of treatment and discrimination against handicapped newborns? Would you recommend appealing the February 23, 1984 decision of the U.S. Court of Appeals for the Second Circuit in United States v. University Hospital, State University of New York at Stony Brook, et al.?

RESPONSE OF EDWIN MEESE
TO
SENATOR CHARLES E. GRASSLEY

1. From the early days of his Administration, President Reagan has given a high priority to the rights of crime victims. In April of 1981, he proclaimed Victims Rights Week and in 1982 established a Task Force on Victims of Crime. One of the recommendations of the Task Force on Victims of Crime in its December 1982 report was to establish a federal program of financial assistance to State victim compensation programs. Since that time, we have been working within the Administration to develop the best possible victim compensation bill. The President has given this initiative his strong personal support throughout this process and we expect that an Administration victim compensation proposal should be formally submitted to the Congress next week.

2. The Administration is on record in favor of legislation which would overturn the Supreme Court's decision in United States v. Enmons, 410 U. S. 396 (1973), and apply the federal commercial extortion statute to significant violence by employees during labor-management disputes regardless of whether employees and their labor representatives were otherwise entitled to seek particular wages or benefits from an employer under federal labor law. However, the Administration also favors safeguards which would preclude the use of the statute when the violence is confined to minor disturbances which may spontaneously arise at or near a labor picket line and which are not deliberately directed at the coercion of the employer.

3. You are correct, Senator Grassley, that the President has made clear his opposition to the discriminatory withholding of life-saving medical treatment from handicapped newborns. I share the President's opposition to such practices. Moreover, the Department of Justice has determined that Section 504 of the Rehabilitation Act of 1973 prohibits discriminatory treatment of handicapped infants in any federally funded health care program. If confirmed as Attorney General, I would be firmly committed to a policy of vigorous enforcement of the rights of handicapped persons, including newborns, under Section 504.

With respect to your question regarding an appeal of the Second Circuit's decision in the so-called Baby Jane Doe case, I understand that on March 8, 1984, the Department of Justice filed a petition seeking to have the decision of the three-judge panel reheard by the full court, en banc.

Attachment D

Questions to Edwin Meese III,
Nominee for Attorney General
of the United States

From Senator Edward M. Kennedy

Bob Jones University Case

1. When and how did you first learn of the Bob Jones University case?

2. Prior to the Cribb memo of December 18, 1981, did you receive any other memorandum concerning the Bob Jones University case?

   If yes, for each such memo, indicate the date of the memo, to whom and from whom it was written, the substance of the memo, and what you did in response to the memo. Please provide the Committee with a copy of each memo described in your answer to this question.

3. Prior to the Cribb memorandum of December 18, 1981, did you discuss the Bob Jones University case or related matters with anyone at the White House, the Treasury Department, or the Justice Department, by telephone or in person?

   If yes, for each such conversation, state to whom you talked, who initiated the conversation, the substance of the conversation, the date the conversation occured, and whether you made any record of the conversation. Also indicate whether you understood that any action was to take place as the result of the conversation, what the action would be, and who would take it.

4. Did you take any action in the Bob Jones University case prior to the Cribb memorandum of December 18th? If yes, state the date and the nature of all such actions.

5. In your testimony to the Committee on March 1, and 2, 1984, you portrayed the change in position by the government in the Bob Jones University case as an uncontroversial decision involving no disagreement among the agencies involved or between the agencies and the White House.

   The Cribb memorandum of December 18, 1981, is inconsistent with this view. The Cribb memorandum indicates a dispute over what the government's position should be involving high political stakes. In his memo, Mr. Cribb tells you that the Justice Department is going in the wrong direction, this is important to the President, and you had better do something to fix it.

   What did you do in response to the memorandum from Kenneth Cribb, dated December 18, 1981, concerning the Bob Jones University case?

6. After you received the Cribb memorandum, did you discuss the Bob Jones University case or related matters with anyone at the White House, the Justice Department, or the Treasury Department, in person or by telephone?

   If yes, for each such conversation, state to whom you talked, who initiated the conversation, the substance of the conversation, the date the conversation occured, and whether you made any record of the conversation. Also indicate whether you understood that any action was to take place as the result of the conversation, what the action would be, and who would take it.

7. Did you at any time convene or attend any meetings concerning the Bob Jones University case with White House staff, the Justice Department or the Treasury Department?

   If yes, for each meeting, state the date, place, participants, substance, and any action that was to be taken as a result of the meeting.

8. On December 22, 1981, four days after Kenneth Cribb advised you to call Secretary Regan and "urge that he and his General Counsel devise a way to moot these cases by granting the tax exemption in question", Mr. McNamar, Deputy Secretary of the Treasury, Fred Fielding, and perhaps others met in Mr. Fielding's office. Shortly thereafter, Mr. McNamar concluded that he could no longer support the IRS position denying tax exemptions to schools which discriminate on the basis of race.

   Who called that meeting on December 22nd? If you don't know, please find out and provide the answer to the Committee

   Did you or Kenneth Cribb or anyone on your staff attend the December 22nd meeting?

   Were you briefed about the meeting? If yes, state by whom, and the substance of the briefing.

9. President Reagan has claimed credit for initiating the idea of the change in the government's position in the Bob Jones University case. He claims to have called Secretary Regan and told him to change the IRS policy.

   Who briefed President Reagan on the Bob Jones University case? If you don't know, please find out and provide your answer to the Committee.

   When did President Reagan call Secretary Regan? If you don't know, please find out and provide the answer to the Committee?

   Who briefed President Reagan for his call to Secretary Regan? If you don't know, please find out and provide the answer to the Committee.

RESPONSES BY EDWIN MEESE III TO QUESTIONS SUBMITTED BY SENATOR EDWARD KENNEDY

1. To the best of my knowledge, I first learned of the Bob Jones University case when I read a memorandum about it dated December 18, 1981, from T. Kenneth Cribb, Jr., who was then with the White House Office of Cabinet Affairs, which was addressed to me through Craig L. Fuller, who heads that Office. A copy of this memorandum has been provided to the Committee.

2. Not to my knowledge.

3. Not to my knowledge.

4. No.

5. The premise that Mr. Cribb's memorandum is "inconsistent" with my testimony before the Committee is inaccurate. The point of the testimony to which you presumably are referring was that, when the Departments of Justice and the Treasury had completed their review of the legal issues involved in the Bob Jones University case in preparation for filing a brief on the merits in the Supreme Court, those Departments agreed on the position they believed the Government should take, based on their reading of the law. Mr. Cribb's memorandum discussed the position the Government had taken in the lower courts and in briefs on whether the Supreme Court should grant certiorari.

As to the question of what I did "in response" to Mr. Cribb's memorandum, I did nothing "in response" to it in the sense of acting on its recommendation or attempting to influence the Justice or Treasury Departments to take a particular position on the matter. The conversations I had with various persons about this matter are discussed in answers to the questions that follow.

6. I had conversations about the Bob Jones University case with various individuals after receiving Mr. Cribb's memorandum (though the conversations were not "caused" or "initiated" because of that memorandum).

During the last week or so of December 1981, I had one or more conversations with Counsel to the President Fred F. Fielding about the basic issues presented in the case and the fact that Justice and Treasury Department officials were reviewing those issues.

As Deputy Secretary of the Treasury R.T. McNamar testified in hearings before the Senate Finance Committee and the House Ways and Means Committee in February 1982, around December 28, 1981 I indicated to Secretary of the Treasury Donald Regan that I would like to be apprised of Treasury's view of the issues involved. Thereafter, Mr. McNamar telephoned me about the matter, as described in his testimony. Copies of relevant portions of Mr. McNamar's testimony have been submitted to the Committee.

As then Deputy Attorney General Edward C. Schmults testified in the same hearings, he "had a brief conversation" with me about the case sometime during the first week of January 1982, "following another meeting on another issue," in which he asked me if I "were aware of the Bob Jones matter," and I said I was. As Mr. Schmults also testified, I gave no "direction as to where [I] wanted the White House to go." Copies of relevant portions of Mr. Schmults' testimony have been submitted to the Committee.

Also during the first week in January, I was present at a regular meeting of the White House Senior Staff at which the case and the position the Departments of Justice and the Treasury had decided to take were discussed. I was also present, along with some other members of the White House Senior Staff, when the same subjects were discussed with the President.

I made no records of any of these conversations. It was not my understanding that any "action was to take place as the result" of any of the conversations in the sense that I or others on the White House staff were to direct Justice or Treasury as to the position they should take in the case. Rather, the conversations were informational, in that they involved either the fact that officials of the Departments were reviewing the issues involved or, later, the position the Departments had arrived at.

7. I did not "convene" any meetings about the Bob Jones University case. As described above, I did receive a telephone call from Mr. McNamar after speaking to Secretary Regan. I attended some meetings, as also described above.

8. I do not know who "called" the meeting in Mr. Fielding's office on December 22, 1981. Mr. McNamar testified in the hearings described above that the meeting took place after he had informed Mr. Fielding of Treasury's "growing concern about the case and the Government's position," and that he asked Treasury General Counsel Peter J. Wallison to see Mr. Fielding on that date. Copies of these portions of Mr. McNamar's testimony have also been provided to the Committee.

Neither I nor anyone on my immediate staff attended the meeting. Mr. Cribb -- who was then with the Office of Cabinet Affairs, one of several offices under my supervision as Counsellor to the President -- attended the meeting.

I do not recall being "briefed" specifically about this meeting. Some statements made to me in later conversations I had with Mr. Fielding and Mr. McNamar, as described above, may have been based in part on the matters discussed in that meeting.

9. I am not aware that the President "called Secretary Regan and told him to change the IRS policy." The statements by the President to which you presumably are referring are his responses to questions asked in news conferences on January 19 and May 13, 1982, copies of which (taken from Public Papers of the Presidents) are attached.

As to who "briefed" the President on the Bob Jones University case, I was present when, as described above, the case and the position the Departments of Justice and the Treasury had decided to take were discussed with the President. I believe White House Chief of Staff James A. Baker, III, White House Deputy Chief of Staff Michael K. Deaver and Mr. Fielding were also present.

As stated by the President in the attached response to a question asked at his news conference on May 13, 1982, he had been concerned when he "came into office" about the question whether Internal Revenue Service agents were "harassing already desegregated schools," and he spoke to Secretary Regan about that question "long before" he saw the summary of the subsequent letter about the Bob Jones University case addressed to him by Representative Trent Lott, which "was the first knowledge that [he] had of the court case."

I am not aware that anyone "briefed" the President before he spoke to Secretary Regan.

Middle East settlement. We won't set a deadline of any kind on when that must be decided. The Secretary has been on a fact-finding trip and will be there again, although no date has been set for that.

We want to help if we can, if we can come up with some ideas that might be helpful in the automomy talks. That is the next step under the Camp David process. And so, as I say, we won't set a deadline, but we're most hopeful that we can be of help and that they will at least by the Sinai time get down to, let's say, a kind of a plan for proceeding.

Sam [Sam Donaldson, ABC News]?

Educational Tax Exemptions

Q. Mr. President, on January 8th the Justice Department announced the decision concerning tax-exempt status for certain schools that clearly gave aid and comfort to racial discrimination. Then in subsequent days you began a series of steps to sort of go back from that. My question is: What happened? Are you responsible for the original decision, or did your staff put something over on you?

The President. Sam—[*laughing*]—no one put anything over on me.

No, Sam, the buck stops at my desk. I'm the originator of the whole thing, and I'm not going to deny that it wasn't handled as well as it could be. But I think that what we actually saw was confusion—and it was rather widespread and encouraged—about what—we had not anticipated the reaction, because we were dealing with a procedural matter. And it was interpreted by many of you as a policy matter, reflecting a change in policy, and then therefore when we went forward, you said, well, then this was another change-back in policy.

What we were trying to correct was a procedure that we thought had no basis in law, that the Internal Revenue Service had actually formed a social law and was enforcing that social law. And we think that that's a bad precedent and is a bad thing to do, and so, there was no basis in the law for what they were doing. So, what we set out to do was to change that procedure and stop the Internal Revenue Service from doing this and then to have Congress implement with law the proper procedure.

I am opposed with every fiber of my being to discrimination, and to have set in law the fact that tax exemptions could be denied to schools that—and educational institutions that practiced discrimination. Now, as I say, it probably wasn't handled as well as it could, because, it being in our minds a procedural matter—and in my mind, certainly—we didn't anticipate that it was going to be as misinterpreted as it was. And what we have accomplished with what we did was we've prevented the IRS from determining national social policy all by itself. It'll now be by elected officials, the Congress.

We'll continue to prohibit tax exemptions for schools that discriminate and for the first time that will be the law of the land. And we help to reserve the rights and liberties of religious schools as long as they don't discriminate.

Q. But, sir, if I may, in the original January 8th decision you didn't ask for legislation. You simply said unless Congress acted. It wasn't until the firestorm that you then asked for legislation.

The President. No, because we went right ahead, and I was having talks with Senators about this. Maybe we didn't act as quickly as we could have. And, as I say, I'm not defending that we proceeded on a course that was as well planned as it might have been.

So, we were mistaken in that regard. But don't judge us by our mistakes. I'm probably going to make more of them. But judge us—how well we recover and solve the situation.

Classified Information

Q. Mr. President, a few days ago Mr. Clark, your new national security adviser, issued a series of guidelines for contact with the press by officials of your administration where classified information is to be discussed. Two questions, sir.

First of all, will it be your policy to advocate the use of all legal means, including lie detectors, to determine who is leaking classified information, if classified information is leaked? And second, do you think it will be possible for administration officials to conduct the normal discourse of briefings with other ones that, once launched, that's it; they're on their way, and there's no preventing, no stopping them.

Q. Mr. President, there are many arms specialists, however, who say that the multiplication of cruise missiles in particular—those can be put on land, can be put on sea ships, submarines and so forth—also have that same effect; you can't call them back once they're launched. They have very short flight time, and there ~~will~~ be thousands of them.

The President. Well, they have a much longer flight time, actually, a matter of hours. They're not the speed of the ballistic missiles that go up into space and come back down again.

But this doesn't mean that we ignore anything. As I said, we're negotiating now on conventional weapons. But I think you start with first things first. You can't bite it all off in one bite. And so our decision was to start with the most destabilizing and the most destructive.

Now, let me, if I could——

Relations With Black Americans

Q. Mr. President, during the past 10 days, black Americans have received a lot of your time—specifically, your visit to Maryland to the home of the Butler family; your call to the woman with Hodgkins disease at the request of her husband; and then, of course, your visit to Providence-St. Mel High School in Chicago this past Monday. My question: Why all this sudden attention focused on black Americans, and what's the purpose?

The President. It isn't all of a sudden at all. I've been doing things like that all my life. You just haven't paid attention.

And as to calling on the Butler family, I read that story in the paper. I was incensed that anything like that can still go on. Oh, I know it does, that there are still people around that are motivated by hatred and bigotry. And I went into the office, and I said, "I'd like to go see those people. I'd like to tell them that their government doesn't feel that way."

But lest you—and I sense in your question that there may be a little cynicism and that you think that there's some theatrics in this—you might as well know that I didn't want any of you around. I told our people that I wanted to do it, I just wanted to go over there and meet with them, and I didn't want any attention. And it was my people who said that if I did such a thing, you'd never trust me again. And you'd start spying on me, and you'd never let me get out of sight. [*Laughter*] And they won the order of the day.

School Tax Exemptions

Q. Mr. President, why did you tell the students in Chicago that when you made the decision about tax exemptions for segregated schools, you were unaware of court cases, since you had signed off on a memo which cited such cases? And secondly, can you explain why you said you did not know there still are segregated schools?

The President. Well, as I said, maybe I should have—I just thought that that question had been resolved for quite some time, that desegregation was a fact of life.

And the letter that you say I signed off on, that was the first knowledge that I had of the court case in the letter that came to me from Congressman Trent Lott—and they come to me in great numbers. But I came into office bringing with me the question that I had about Internal Revenue agents harassing already desegregated schools just on their own as if they were somehow not doing right. And so, I had spoken to the Secretary of the Treasury long before that notation went on the letter.

Q. But, sir, just a followup. What you said to the students was that when you made the decision you did not know there were court cases and that was after you had read the memo from Congressman Lott.

The President. No, the decision that I'm talking about is, I said to the Secretary of the Treasury that he ought to look into the activities of Treasury agents who were going into desegregated schools and who were then, on their own, just in their own belief and what they thought ought to be done, harassing the schools and saying they ought to be doing better, they ought to be instituting scholarship programs and so forth. Well, many independent schools like the one I just addressed last weekend live in genteel poverty. There's a limit to how much they can do of that kind, and yet, they're totally desegregated and have no bias whatsoever.

And I had told him that, and, having told him that, that was—I went on about my business. And then sometime later this order was issued, and that was the first time then. And the minute that I heard about how it was interpreted, that this was going to change the whole situation with regard to segregated schools and tax exemption, I said, "Well, then the answer lies it should be by law, not by bureaucratic regulation." And I said, "Let's send some legislation up taking care of the situation."

But now I'm glad you asked me, because now, just like the children, I've told you the truth.

Yes?

Social Security

Q. I understand that you have said that you'll guarantee for social security recipients that they will not only have their current benefits cut, but they'll get the July increase. But let me ask this as narrowly as I can. Will you support in the future any kind of freeze on the cost-of-living increases in social security benefits. And what about those down the road, those in their forties and fifties who've paid into the system? Will you guarantee them social security benefits that will keep pace with the cost of living?

The President. The whole matter is in the hands of the commission that I finally appointed when I discovered that the talk about social security led to it becoming a political football and a terrorizing experience for the people dependent on the program. I don't know what the commission is going to come up with, but the program has expanded to where it has a number of different facets that were never a part at the beginning and that are not associated with the benefit payments to senior citizens who have no other source of income.

Now, there are reorganization things that can be done. The one that we proposed last year, believe it or not, would have made the program solvent, and that was one which simply changed for a brief period—or added a brief period of time to early retirement. Now, that's a new facet that was passed after the program was well underway—I don't remember the exact year it was passed—but suddenly saying that, well, people at 62 could retire on 80 percent of their full payment. We had proposed last year that in an effort to make the program solvent, that we extend that, that they could retire at 62, but they would not get 80 percent until a period later before they became 65. And that would have been enough of a change to make the program solvent.

There are other things. There is the program of social security disability and Social Security itself has admitted, and in 1980, under the previous administration, a law was passed to try and clean up what was believed to be a gigantic abuse of that program. So, there are things that can be done.

One of the problems with the two tax increases still scheduled in social security that were passed again under the previous administration, the possibility exists that young people today may find that their social security tax is so high that they could never expect to get from social security what they pay in. And they would be far better off if they had that money in their own hands to buy a retirement policy of some kind. So, there are all these things open.

All I know is that I told the people that I appointed to the commission that one thing had to be certain: That whatever plan was selected, those people now dependent on social security must not be deprived of their benefits or have their benefits cut back.

Now, with regard to your question about cost of living, here you're talking about—I think there are times in which, in the temporary situation such as we are now, that you could temporarily put a ceiling on a cost of living adjustment. And remember you're not cutting them back there; you are simply reducing the amount of their increase if you did that. But we have no plans for that, because I'm kind of of the mind that once they get this 7.4, by the time next year rolls around, there maybe won't be any cost of living increase 'cause there won't be any increase in the cost of living.

Ms. Thomas. Thank you, Mr. President.

The President. Oh, Helen, have you

Attachment E

Enforcement of Civil Rights Laws

1. Michael Uhlmann, Assistant to the President in charge of Civil Rights Policy Development, has said that it is inaccurate to say the Administration is not enforcing the law of the land, "unless you call all of the decisions of the Supreme Court the law of the land." (St. Louis Post Dispatch, December 8, 1981, pp. 1,7).

   Do you believe that the decisions of the Supreme Court are the law of the land?

2. The Supreme Court: "The burden on a school board today is to come forward with a plan that promises to work realistically now... (I)f there are reasonably available other ways...promising speedier and more effective conversion to a unitary, non-racial system, 'freedom of choice' must be held unacceptable." (Green v. Board of New Kent County, 391 U.S. 430, 438, 439 (1968))

   Mr. Reynolds: "We are not going to compel children who don't choose to have an integrated education to have one." (The New York Times, November 20, 1981, p. A14)

   The Supreme Court has said that where there is a Constitutional violation, "freedom of choice" is not sufficient unless it works. Assistant Attorney General Reynolds says that the only remedies he will pursue are "freedom of choice" remedies and he has followed that policy.

   If confirmed as Attorney General, will you follow the Supreme Court in Green or the present policy of the Justice Department?

3. How do you reconcile the Justice Department consent decree in the Bakersfield case with the Green decision in light of the fact that there was mandatory segregation in Bakersfield and the consent decree calls only for "freedom of choice" and does not even require an assessment of whether "freedom of choice" is effective?

   If Bakersfield is not reconcilable with Green, will you seek to reopen the consent decree in Bakersfield?

4. The Supreme Court: "All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest to their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation... (T)ransportation has been an integral part of the public education system for years...Desegregation plans cannot be limited to the walk-in school." (Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 27-29 (1971))

Mr. Reynolds: "We have concluded that involuntary busing has failed to advance the overriding goal of equal educational opportunity. Adherence to an experiment that has not withstood the test of experience obviously makes little sense." (Testimony before the House Subcommittee on Civil and Constitutional Rights, November 19, 1981)

The Supreme Court has said that desegregation can't be limited to the walk-in school. Assistant Attorney General Reynolds says there shall be no mandatory desegregation of any kind, even for walk-in schools.

If you are confirmed as Attorney General, will you follow Swann or current Department of Justice policy?

5. The Supreme Court: "In short, common sense dictates the conclusion that racially inspired school board actions have an impact beyond the particular schools that are the subjects of those actions. That is not to say, of course, that there can never be a case in which the geographical structure of, or the natural boundaries within, a school district may have the effect of dividing the district into separate, identifiable and unrelated units. Such a determination is essentially a question of fact to be resolved by the trial court in the first instance, but such cases must be rare." (Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189, 202 (1973)) (emphasis added)

Mr. Reynolds: "In deciding to initiate litigation, we will not rely on the Keyes presumption but will define the violation precisely and seek to limit the remedy only to those schools in which racial imbalance is the product of intentionally segregative acts of school officials." (November 19, 1981, testimony, p. 13)

The Keyes presumption is a tool that the courts have given to the Justice Department and private plaintiffs to enable them to vindicate their constitutional rights. The Justice Department says it will not use that tool.

Do you believe that when Congress has given the Justice Department the responsibility to protect Constitutional rights of victims of discrimination, that it should use all tools provided by Congress and the courts?

If you are confirmed as Attorney General, will the Justice Department reinstate use of the Keyes presumption?

RESPONSE OF EDWIN MEESE
TO
SENATOR EDWARD M. KENNEDY

Enforcement of Civil Rights Laws

1. Supreme Court decisions are most definitely the law of the land and must be followed unless and until overturned by an act of Congress or a subsequent ruling by the Supreme Court. The country's entire administration of justice is built on that bedrock proposition.

2. If confirmed, it is my intention to continue the Department's current policy of seeking remedies for intentional school segregation that do not require the mandatory busing of students. I believe such a policy is fully consistent with all applicable Supreme Court precedents, is less disruptive to the communities affected, will enhance the desegregation objective, improve educational opportunities and produce a decline in the exodus of students from public schools.

In advancing desegregation mechanisms other than busing as a more effective remedial alternative for eliminating segregation, the Administration has not relied on the sort of "freedom of choice" plans condemned in Green. To the contrary, its desegregation plans include such features as (1) "magnet schools" (schools with well-publicized special programs designed to attract students of all races by appealing to particular educational interests -- e.g., computer science or performing arts); (2) faculty assignment plans; (3) alteration of attendance zones; and (4) judicious school closings and construction. Voluntary student transfers, with special emphasis on majority-to-minority transfers, are also a feature of such desegregation plans, with incentive programs relied upon and community involvement require to promote the transfer program. The Administration's alternative approach has already demonstrated an ability to achieve a desegregated student body while providing all students in the school district an equal opportunity for an enhanced education. Such plans are not only fully consistent with the Green case, but also with all other Supreme Court decisions; they can not fairly be dismissed as "free choice" plans.

The Administration is not alone in recognizing the need for effective alternatives to busing. Congress has repeatedly sought to limit the use of federal funds for mandatory busing purposes. And the courts, which are charged with the responsibility of adopting workable remedies for constitutional violations, are also coming to recognize the failure of busing and the viability of incentive-based alternatives. Indeed, in the past several weeks, even the NAACP announced its readiness to provide the Cincinnati school district the opportunity to desegregate its public schools through a voluntary transfer program utilizing a magnet school concept. While the proposed plan indicated that mandatory assignments would be available as a "back-up" if the objectives of the voluntary plan were not realized, a variant of the Administration's approach is to be utilized in the first instance in Cincinnati.

RESPONSE OF EDWIN MEESE
TO
SENATOR EDWARD M. KENNEDY

3. The consent decree in the Bakersfield case is an excellent example of degree of difference between the Administration's approach and the "freedom of choice" plan involved in Green. In Bakersfield, the intentional racial segregation of children will be remedied without resort to mandatory busing with its attendant disruption. The approach is not simply to advise parents and students that they are now free to go where they choose -- as was the case in Green. Rather, the Bakersfield plan -- adopted with the full support of the school administration and local organizations -- offers new educational options in the form of magnet schools, all carefully selected and strategically located to attract integrated student bodies. A mini-magnet curriculum program will be utilized by the Board while the more ambitious magnet program is being phased into the system. The whole operation is to be carefully monitored by the Government and the court to make sure that it achieves its desegregation objective. There are special transportation incentives for those students who participate in the transfer program. Majority-to-minority transfers are available to those students wishing to attend a more desegregated school. In addition, educational enrichment programs will be provided at any predominantly one-race schools that remain. The students and the community will thus achieve equal and better educational opportunities in a remedial program tailored to local needs and fully responsive to the desegregation command in Green and its progeny. The plan has received judicial approval and, to my knowledge, no reason has yet been offered for the United States to seek to re-open the decree.

4. The Administration seeks to remedy intentional segregation in the schools with creative and imaginative solutions that will attract the support of local communities and to do so under the watchful eyes of federal judges. Such innovative approaches are fully consistent with Swann and other cases.

We believe new solutions are compelled because mandatory busing has proved to be an ineffective remedy in desegregation cases, engendering bitterness among members of all races and resulting in some cases in massive losses of student enrollment.

The phenomenon of student enrollment loss in response to mandatory busing is now well documented. While mandatory student reassignments may achieve some reduction in the level of racial imbalance in the first year or two, the long-term consequences, particularly in large cities, generally reflect significant enrollment losses, with the degree of interracial contact only infrequently returning to the levels that existed prior to the imposition of mandatory busing. Moreover, as families move from the district to avoid such decrees, there is often a noticeable drain on the municipal tax base, with a predictable erosion in the quality of public education. Certainly, Swann never contemplated such a result.

RESPONSE OF EDWIN MEESE
TO
SENATOR EDWARD M. KENNEDY

Faced with this experience, the pressures among minority and non-minority parents to find alternatives to the remedial tool of mandatory student assignments (whether used in connection with cross-town schools or walk-in schools) cannot be lightly dismissed. Our public school systems better serve the Supreme Court command in Brown, Green and Swann by offering to all students, without regard to race, a quality public education in a desegregated environment. Mandatory busing has, regrettably, failed to achieve that end; the Administration's alternative approach promises to do so.

5. I do indeed think that the Justice Department should use all the legal tools at its disposal to fight discrimination, and my understanding is that it is doing so. In this regard, there has been widespread misunderstanding about the Administration's willingness to use or not use the so-called Keyes presumption, i.e., that proof of intentional segregation in a substantial portion of a school district will support an inference that all other racial imbalance in the system is also purposeful. This rule is one that shifts the burden of proof during the trial of a school desegregation case to the school authorities, compelling them to prove that the inference of district-wide de jure segregation is inaccurate. The Department of Justice continues to use this trial tool, and indeed has done so without interruption throughout the tenure of this Administration. Nor have there been any plans to discontinue reliance on the Keyes presumption. In the Yonkers litigation, for example, that is currently pending, the Department has unambiguously advised the Court of the applicability of Keyes as requiring a shifting of the burden of proof to the City.

The referenced statement of the Assistant Attorney General for Civil Rights addresses a different point -- that is, the use of the Keyes presumption, not as a trial tool, but "[i]n deciding to initiate litigation" (emphasis added). As the Assistant Attorney General has explained in response to similar questions regarding his November 19, 1981 testimony, the view expressed in that testimony was simply that, prior to litigation, during the Department's investigation of the facts, the Keyes presumption will not be given any weight; however, once suit is filed, this "tool" will be used fully. I find this analysis and application sound and do not contemplate changing it. Indeed, the Sixth Circuit Court of Appeals recently discussed the Keyes presumption in just such terms in Alexander v. Youngstown Board of Education, 675 F.2d 787 (6th Cir. 1982), pointing out that there is no authority for using the Keyes presumption prior to an evidentiary showing at trial of de jure segregation with respect to some schools within the school district.

Attachment F

Fair Housing

1. Courts have held that housing practices which have discriminatory effects violate Title VII of the Civil Rights Act. The Department of Justice refuses to challenge housing practices unless they have discriminatory intent as well as effect. (See March 15, 1983, memorandum of Assistant Attorney General Reynolds to HUD General Counsel Knapp).

   Do you think the Justice Department has a responsibility to use this legal tool which the courts have provided to prove violations in fair housing cases?

   If you are confirmed as Attorney General, will you change current Justice Department policy to conform it to court decisions?

Employment Discrimination

1. All courts of appeals that have ruled on the issue have held that ratio hiring is an appropriate remedy for dealing with discriminatory job practices against a class of people. Justice Department policy is not to seek such remedies in any case.

   Do you believe that the Justice Department has a responsibility to use this remedial tool in employment cases?

   If confirmed, will you change current Justice Department policy?

Sen. Kennedy's questions to Mr. Meese

RESPONSE OF EDWIN MEESE
TO
SENATOR EDWARD M. KENNEDY

Fair Housing

1. The Department has been criticized for failure to advance an "effects" test in litigation under the Fair Housing Act. However, the Supreme Court has not yet resolved the proper standard of liability under Title VIII, and the various lower courts have produced a variety of conflicting interpretations. While there are a few cases that have found a violation of the Fair Housing Act solely because of disparate effects, most courts, while acknowledging that an "effects" standard has been used in a Title VIII context, have ultimately rested their decision on a finding of wrongful intent. In reaching this decision, recognition has generally been given to the fact that evidence of "discriminatory effects" can assist in establishing an inference of wrongful intent sufficient to make out a Title VIII violation.

It is my understanding that, on the basis of this judicial authority, the Department has proceeded under Title VIII on proof -- whether direct or indirect -- of an intentional violation. The Act's language supports such an approach (42 U.S.C. §3604(b)), and there is nothing in its legislative history to suggest that Congress had a different understanding of the statute that would allow it to reach acts having an unintended racially disparate impact.

If confirmed as Attorney General, I shall insist that the Department continue to enforce the fair housing laws vigorously, using all the legal tools that are available. In this connection, it should be noted that the Civil Rights Division has recently reorganized and there now exists a separate section in the Division devoted largely to the enforcement of Title VIII.

Employment Discrimination

1. The Department of Justice has, correctly, in my view, declined to seek racial or sex-based quotas, goals, set-asides, or other numerical ratios in order to remedy unlawful employment discrimination by state and local governments. The Department's position is grounded on the proposition that the Fourteenth Amendment outlaws discrimination on account of gender and skin color in public employment matters, and therefore relief that affords to nonvictims of alleged discriminatory behavior preferential treatment based on race or sex is constitutionally impermissible.

Rather than seek to cure discrimination by using discriminatory means, the Department has insisted on a three-pronged remedial program that fully comports with constitutional commands. Pursuant to this program, all identifiable victims of the alleged discrimination are awarded "make whole" relief, future discriminatory employment practices are enjoined, and affirmative action in the form of extensive recruitment and outreach programs are compelled in order to attract larger numbers of qualified minority and female applicants to compete on a nondiscriminatory basis for the job.

This remedial program places no arbitrary ceiling -- in terms of quotas, goals or set-asides -- on the numbers of minorities or women that can be selected; it attaches no implied stigma that comes from telling some group -- any group -- that its membership can only "make it" as a result of special, preferred treatment; and it raises no suspicions among other workers that certain emloyees are hired and retained solely for reasons of race or sex.

When the legal constraints that impede race-conscious and sex-conscious decisionmaking by government are combined with the practical problems that tend to "hold down," rather than increase, minority and female employment under a regime of "affirmative action" goals and timetables, it is difficult to ascertain what use the Department could responsibly make of the remedial tool you have referred to as "ratio hiring." I would therefore not anticipate any changes of current Justice Department policy.

Attachment G

STROM THURMOND, S.C., CHAIRMAN
CHARLES McC. MATHIAS, JR., MD. | JOSEPH R. BIDEN, JR., DEL.
PAUL LAXALT, NEV. | EDWARD M. KENNEDY, MASS.
ORRIN G. HATCH, UTAH | ROBERT C. BYRD, W. VA.
ROBERT DOLE, KANS. | HOWARD M. METZENBAUM, OHIO
ALAN K. SIMPSON, WYO. | DENNIS DeCONCINI, ARIZ.
JOHN P. EAST, N.C. | PATRICK J. LEAHY, VT.
CHARLES E. GRASSLEY, IOWA | MAX BAUCUS, MONT.
JEREMIAH DENTON, ALA. | HOWELL HEFLIN, ALA.
ARLEN SPECTER, PA.

EMORY SNEEDEN, CHIEF COUNSEL
QUENTIN CROMMELIN, JR., STAFF DIRECTOR

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

March 7, 1984

The Honorable Strom Thurmond
United States Senator
Chairman
Committee on the Judiciary
SD-224
Washington, D.C. 20510

Dear Mr. Chairman:

Following are questions to be submitted to Edwin Meese III in connection with the confirmation hearings concerning his appointment to be Attorney General of the United States of America:

The attached documents indicate that you may have been aware that the Reagan campaign was receiving information from the Carter Administration and/or the Carter campaign organization during the 1980 Presidential campaign.

1. Were you aware of the fact?

2. What is your positon with respect to the propriety of such a practice?

3. On March 1, 1984, The Washington Post reported a ruling of the U.S. District Court which indicated that the Department of Justice had not complied with the "Independent Counsel" (formerly "Special Prosecutor") statute in its handling of the so-called "debategate" case. In light of the fact that your name appears on the attached documents, will you, if confirmed for the position of Attorney General, disqualify yourself from participation in any further Justice Department decision or action with respect to this case?

Thank you for your consideration in this matter.

Very sincerely yours,

Howard M. Metzenbaum
United States Senator

HMM:bb
enclosures

D-271

MEMO

WILLIAM E. TIMMONS
PRESIDENT

SEP. 25 1990

TO ED MEESE —

WHAT THINK?

B

TIMMONS AND COMPANY, INCORPORATED
1850 K STREET, N.W., WASHINGTON, D.C. 20006
(202) 331-1760

SENSITIVE IN NATURE
CONFIDENTIAL

17 SEP 80

MEMORANDUM

TO: Max Hugel

FROM: Jack Kelly JK

SUBJECT: Meeting requested by General Ellis, USAF

General Ellis of the United States Air Force is Commander of SIN/SAC he has requested a sitdown with the Governor to discuss the deterioration of the Stategic Air Command. Due to his rank and position he cannot formally institute the meeting but if a meeting were requested by RR he would be happy to sit down with him. The media exposure of such a meeting could be considerable in that the General has said he " wants to blow Jimmy Carter out of the water".

Please contact me as to the routes to be taken to implement this request. Plaese note that this request should not be to broadly advertised. The General must keep a "low profile" in his political actions.

Bill Timmons
What do you think?
Max Hugel

BT
Doesn't make
sense to me

TUK [illegible] D-

FROM Wayne Valis

FYI

I sent th
intelligence on
Jim Baker.
WI

Memo

From: WAYNE VALIS Wayne
To: Jim Baker
Date: 10-21-80

Jim --

These are notes based on a 'brainstorming session' attended by Carter-Mondale staffers (middle level types). They are provided by a very reliable source who has intimate connections to a Carter debate staffer.

Wayne

Proposed Carter Tactics for Debate and Campaign Advertising

1.) Carter plans to expose Reagan flip-flops.
    E.g. Reagan's positions on tax breaks for private education:
        Before: in favor of tax credits for high school and college.
        After: in favor of credits only for college.
    E.g. Reagan's politions on bilingual education
    E.g. Reagan's polition on OSHA

    Where Reagan has not flip-flopped, Carter plans to portray him as having blurred or dangerous positions.

    Where Reagan has changed his position, Carter plans to portray Reagan as indecisive, as a political opportunist, or as opposed to an enlightened set of policies (especially on such questions as ERA and Minimum Wage)

2.) Carter is hoping to be portrayed as the underdog in the debate. But in the week preceding the debate, he hopes to come across as having momentum.

3.) Carter plans to brand Reagan-Kemp-Roth as an "Alice-in-Wonderland" medicine.

4.) Carter is pleased with the recent statistics showing an economic upturn. But he is very concerned about the high interest rates. He plans to blame the Fed for these, but he fears that the people won't be able to distinguish between the Fed and his own administration.

5.) He plans to continue to harp on the warmonger issue.

6.) He plans to raise the age issue again. He plans to point out that when Bush was a congressman, he proposed a bill that would require mandatory retirement for congressmen at age 70. Carter hopes to point out the incongruity of the situation.

7.) Carter may have ads which interview Reagan's old classmates in order to highlight how old they are.

8.) Carter is trying to get a hold of film-clips of Reagan filming campaign ads. (He may already have such film-clips.) These clips apparently show Reagan being corrected time and again for various mistakes by voices of aides who are saying: "No, Governor, the figure is 75% and not 10%".... "No, Governor, the head of the USSR is Brezhnev not Khrushchev" and similar such corrections.

9.) Carter may use a film-clip of Reagan asking "Who is that?" when reference in conversation is made to Giscard d'Estaing.

10.) Carter's people are afraid of the effectiveness of the Reagan ads which use the bar graphs showing the inflation rates and the ads which show the grocery carts.

July 28, 1980

MEMORANDUM FOR TIM KRAFT
TOM DONILON
LES FRANCIS
PETER KELLY

FROM: BERRY CRAWFORD Berry

SUBJECT: Convention and General Election Rural Activities

This memo summarizes our rural strategy for both the Convention and the general election. This strategy has emerged from the earlier Watson memos and recent conversations with Rick Hutcheson, Tom Donilon, and others on what approaches would be both procedurally acceptable and substantively most effective.

Convention

We plan to convene a national rural caucus at the Convention. Key activities will involve:

- o Setting aside a two-hour block of time in a suitable meeting room where rural (small city, small town) delegates can meet and hear from nationally recognized rural leaders (e.g., Jack Watson, Ray Marshall, Bob Bergland, Herman Talmadge, Pat Leahy, Bill Alexander) on small town/rural issues and the Carter rural record.
- o Setting up a workroom suite at the Convention headquarters hotel where rural delegates can obtain detailed information on the President's rural policy and how their states, counties, and communities have benefited under the Carter Administration, and where this information can be incorporated in tailored press releases for use when the rural delegates return home.
- o Using state rural whips and two floor leaders (J. B. Bleckley and Eugene McCord) to contact non-metropolitan delegates and encourage them to attend the rural caucus and visit the workroom suite.

In this connection, the Campaign/DNC is requested to do the following:

- o Schedule a meeting room and a two-hour block of time for the rural caucus.
- o Provide credentials for those state rural whips who are not delegates (see attached list) and for the two floor leaders (J. B. Bleckley and Eugene McCord).

August 11, 1980

MEMORANDUM

TO: Ed Meese

FROM: Max Hugel

Bill Casey asked me to have you review this memo which fell into my hands and to come up with some of our own strategy on this particular subject that might counteract this effort.

Attachment

. . . an adjoining bedroom for McCord (August 9-14).

- o Include an announcement of the rural caucus in a DNC mailing before the Convention (I can provide draft language).

All related expenses--including the bedroom and workroom suite; rental typewriters, a xerox machine, and refreshments for the workroom; rural caucus buttons; and possibly caucus stationery--will be covered by McCord.

I will be responsible for the caucus event, including lining up nationally prominent rural spokepersons.

General Election

Post-Convention activities will focus on working through state rural coordinators (and county coordinators to be selected by the state coordinators) in approximately 20 target states to get this message out: that under the President's Small Community and Rural Development Policy, this Administration has done more to address rural problems and needs than any past Administration--and that this deep concern for rural America grows out of Jimmy Carter's own rural roots. Farm issues could be addressed as part of the effort, but the emphasis will be on the needs and problems of small city and small town residents (e.g., health, transportation, housing, energy, economic development, etc.).

We should plan to select the state rural coordinators in as many of the target states as possible before the Convention, so we can use them as state whips for the caucus. Recommendations for rural coordinators in key states are noted on the attached list of suggested whips. These names have come from J. B. Bleckley, Eugene McCord, and myself--and are either people we know personally or have been recommended by others who are close to the campaign efforts in the states.

We should also plan to invite the state rural coordinators to Washington, D.C., in late August for a strategy session with White House and Campaign/DNC staff and possibly a White House reception. The strategy meeting will involve a full briefing on the rural policy and an opportunity to provide materials for campaign use (mailings, etc.), including complete information on grant-in-aid which has flowed to the states and counties.

It is anticipated that the coordinators will not be paid campaign workers, but money will be needed to pay travel and other expenses (e.g., telephone, printing, and postage) when state campaign offices/resources are not readily available. To cover these expenses--and possibly the salary of a full-time rural affairs staff person at C/M or DNC (which I recommend)--one or more fundraisers is recommended (see next page).

Fundraiser

To raise money for the post-Convention rural effort, we propose holding a fundraiser in Washington, D. C. after the Convention. A steering committee of influential rural supporters in both the public and private sectors could be formed to sponsor and help organize the event. Speakers could include key Administration spokesmen for the policy (e.g., Bergland, Marshall, Watson) and/or supportive Congressional members (e.g., Talmadge, Leahy, or Alexander). With guidance from C/M Headquarters or I I would like to move ahead in planning such a fundraiser.

Wright,
McNeill|Associates
Consultants to the
Republican
National
Committee

[redacted]

D-2

ED MEESE →
Ideas how to counter??
BJ

October 17, 1980

MEMORANDUM

TO: ~~Art Teele~~ ✓

FROM: Thelma Duggin ✓

RE: The Carter Plan for the Black Vote

The Carter Campaign originally budgeted $1 million for the Black effort. This amount has been spent. They estimate that they will need another $25,000 to pull off a surrogate caravan in the Black community. Presently, they are debating whether or not to allot there additional funds-the general feeling in the Carter camp is if they do nto make this extra effort then they will certainly lose; therefore, the probability of them allocating these funds are extremely strong.

The caravan which they are planning will be divided into three grou The leaders of these groups will be Andy Young, Maynard Jachson and Coretta King. There will be a total of 27 other Blacks included in this caravan. The targeted cities will be Houston, Philadelphia an Miami. In these cities the Carter campaign will be releasing the 3 member Black caravan to do an all out blitze in the Black community. They will be concentrating on churches and civic organization rallie

It should be noted that the Carter campaign has in possession a ver sophisticated video tape, produced in Japan, of the Imperial Wizard of the Ku Klux Klan. On this tape the Imperial Wizard explains wh he is supporting the Republican Platform and the Republican Preside Candidate. According to my sources, this film is very hard hitting and even repulsive to many of the Carter aides. This film will mos likely be utilized during the aforementioned blitze.

If the money is allocated to this effort it will go into high gear by next week.

I received this information from a very reliable Carter aide and it should not be taken lightly. I feel that it is essential that the Reagan Bush campaign be prepared to counter act this effort should the Carter campaign decide to allocate the necessary funds.

RESPONSES OF EDWIN MEESE III TO QUESTIONS SUBMITTED BY SENATOR HOWARD METZENBAUM

#1. I have no knowledge of any effort by the 1980 Reagan-Bush presidential campaign, or anybody associated with that campaign, to obtain from the Carter Administration, or the 1980 Carter-Mondale presidential campaign, any private materials or information. I have reviewed the documents attached to your questions and am enclosing a copy of those portions of my affidavit to the Human Resources Subcommittee of the House Post Office and Civil Service Committee pertaining to such documents.

#2. It is my understanding that after a lengthy investigation, the Department of Justice concluded that there was no credible evidence to support a finding that the transfer of briefing materials violated any criminal law. (A copy of that report is attached.) Nevertheless, I personally do not condone any practice or procedure that involves the obtaining of private materials or information by improper means. Specific judgments as to the propriety of alleged acts, the facts of which are unknown to me, cannot be made.

#3. I would, if confirmed, recuse myself from participation in this matter.

EXCERPTS FROM AFFIDAVIT OF EDWIN MEESE III DATED 22 FEBRUARY 1984

> "I do not recall receiving in 1980 an August 11, 1980 memorandum addressed to me from Max Hugel, (identified by the Sub-Committee as Attachment 3). Nor do I remember seeing in 1980 the July 28, 1980 attachment to this document. I do not know the source of the July 28, 1980 attachment."
>
> "I do not know the source of the information in the October 17, 1980 memorandum from Thelma Duggin addressed to Art Teele, (identified by the Sub-Committee as Attachment 4). I do not recall seeing it in 1980."
>
> "I do not recall seeing in 1980 the September 17, 1980 memorandum from Jack Kelly to Max Hugel, (identified by the Sub-Committee as Attachment 5). I do not know if Governor Reagan met with General Ellis during the campaign and I do not recall if I took any action regarding this memorandum."
>
> "I do not know the identity of the source of the information addressed to me by Wayne Valis in his October 21, 1980 memorandum, (identified by the Sub-Committee as Attachment 18)."

Department of Justice

FOR IMMEDIATE RELEASE
THURSDAY, FEBRUARY 23, 1984

AG
202-633-2007

REPORT OF THE DEPARTMENT OF JUSTICE REGARDING THE CARTER DEBATE BRIEFING MATERIALS

In June of 1983 the Federal Bureau of Investigation commenced an intensive investigation into how certain briefing materials prepared for President Carter prior to the October 1980 Presidential Debate were obtained by individuals assisting the campaign of Ronald Reagan. This investigation has now been closed by the Criminal Division of the Department of Justice. Although every lead has been followed to its conclusion, the investigation has not been able to determine precisely how the briefing materials in question were transmitted. However, the investigation uncovered no credible evidence that the transfer violated any criminal law.

This report sets forth a description of the investigative process, a summary and analysis of the investigative results, and a discussion of the applicable law.

I. THE INVESTIGATION

In mid June of last year there were reports that briefing books prepared for President Carter were improperly obtained by Reagan aides just prior to the October 28, 1983 presidential debate. In response to both the many questions raised in the press and the President's specific request, on June 29, 1983 the Department requested the FBI to "conduct an appropriate investigation to ascertain how the materials were obtained and by whom."

From June 1983 to February 1984 the FBI, in coordination with the Public Integrity Section of the Criminal Division, has conducted an investigation into the circumstances of the briefing materials as well as several other related matters that arose during the investigation. Over 220 individuals including President Reagan and many other high officials of both the Carter and Reagan campaign were interviewed one or more times. Approximately one thousand boxes of documents, audio and video tapes were reviewed by the FBI including the Reagan campaign files, videotapes of the Debate preparations and hundreds of other documents relating to facts and circumstances in the investigation. In addition, where appropriate, forensic laboratory examinations of documents were conducted. All FBI interviews have been reviewed by and all documents acquired by the FBI in the course of the investigation have been provided to the House Subcommittee on Human Resources of the Post Office and Civil Service Committee.

II. INVESTIGATIVE RESULTS

A. Factual

1. Briefing Materials - The following has been established:

a) The only Carter debate briefing materials which the evidence established to be in the possession of Reagan supporters prior to the debate were photocopies of a rough draft of foreign policy briefing material and photocopies of a draft of briefing material prepared for Vice President Mondale. While there is some uncertainty in the recollection of certain individuals as to what they saw, there is no firm evidence that the final Carter briefing books were ever in the possession of any Reagan aides prior to the debate.

b) No government documents are among the briefing materials that were obtained by the Reagan campaign. They were drafts created for the Carter campaign. They were not produced on government time or at government expense, and they were based on public source material.

c) No classified information was contained in the briefing materials.

d) Few internal controls over the distribution and confidentiality of these materials existed within the Carter campaign. Most of the individuals with access to them, including many non-government secretaries, did not consider them particularly sensitive.

e) Other than in assisting David Stockman in his preparation for the mock debates, there is no indication that the Reagan campaign utilized the draft material in question.

f) All of the Reagan campaign officials who either possessed or were aware of the materials denied any knowledge of how they were originally obtained and any belief that the materials were stolen. In fact, there is no evidence that the material was stolen.

g) No evidence was found of any plan or conspiracy by Reagan election officials to obtain the Carter briefing materials or any other confidential, internal Carter documents.

2. Other Documents: In the course of the investigation, the FBI reviewed thousands of documents from the files of the Reagan campaign and its officials. Several of these documents have been identified as internal documents of the Carter White House or the Carter campaign. In the case of each internal

Carter document found in Reagan campaign files, the FBI sought to ascertain by what means the documents were obtained. In no instance was there any evidence of theft or criminal misappropriation. In most instances the material in question had been widely disseminated to the press or others and were obtained through wholly proper channels. In some cases, it was impossible to determine how documents were obtained due to the professed lack of memory or knowledge on the part of those in possession of the documents. Regarding the internal Carter documents, there is no evidence that classified materials were improperly disseminated or that any criminal means were used to obtain any of the documents.

B. Analysis - In analyzing the investigative results the applicability of several criminal statutes have been considered. 18 U.S.C. § 641 prohibits theft of government property. There is no evidence of theft and the great weight of the evidence indicates that the briefing material was not "government property" as defined by the statute. Other Federal, District of Columbia and State theft statutes are likewise not implicated because of the absence of any evidence that documents were obtained by theft as opposed to other, lawful means.

Statutes prohibiting improper disclosure of classified information -- such as 18 U.S.C. §§ 793, 794, 798 or 50 U.S.C. § 783 -- are not implicated because there is no evidence that anyone disclosed classified information.

Federal Election Campaign Act statutes such as 2 U.S.C. § 441(h), which prohibits the "misrepresentation of campaign authority," is not applicable because there is no evidence that an agent for one campaign was in any way directed to work in the other campaign for improper purposes.

There are insufficient grounds to assume that any individual engaged in willful falsification or the obstruction of the investigation. No independent evidence indicates a knowing falsehood. Any seeming inconsistencies could be explained by differences in recollection or interpretation.

III. APPLICABILITY OF THE ETHICS IN GOVERNMENT ACT

Under Chapter 39 of the Ethics in Government Act, 28 U.S.C. § 591, the Attorney General must conduct a statutory preliminary investigation upon receipt of specific information of a federal crime by an official covered by the act. In this case, although several officials covered by the act either had knowledge of or possessed the draft briefing papers in question, there is no specific, credible information of a federal crime having been committed by any of them or by non-covered officials.

Attachment H

TO: Duke Short
FM: Steve Metalitz
RE: Written questions for Edwin Meese
DT: 3/7/84

Pursuant to the unanimous consent of the Committee granted during the Meese confirmation hearings last week, attached please find written questions which Sen. Mathias would like to have submitted to Mr. Meese for response.

[illegible]

Mr. Meese, with respect to the Equal Employment Opportunity Commission, there is an unresolved issue which you may have to deal with almost as soon as you take office as Attorney General. This is an issue having to do with the Justice Department in its capacity as an employer, not as legal representative.

As you know, the EEOC has been charged with the responsibility to collect information about employment practices of the Federal government, and to help Federal agencies combat discrimination in employment. To carry out this mandate, which Congress has given it, the EEOC has asked the various agencies to provide information concerning their employees in various categories. The EEOC has found the Justice Department to be particularly recalcitrant in responding to this request. I understand that EEOC has rejected at least two reports submitted by Justice, because they lack this numerical data which Congress has ordered EEOC to collect. I am told that EEOC has repeatedly requested Justice's cooperation, most recently on February 3 of this year.

1. How should the Justice Department respond to this request? What will you do to see to it that the agency which you have been nominated to head provides the EEOC with the information it needs to do its job?

[illegible] employees:

Mr. Meese, in the office of Attorney General you will, for the first time, have direct authority over a large corps of career government employees. Some of them, I think, await your arrival with some trepidation.

When you first arrived in Washington, your attitudes toward civil servants, at least as advertised in the media, were something less than civil. One article in the New York Times related that "in the Reagan White House, career government employees are the target of many jokes and jibes," and said that both you and the President had a "visceral response" to "the thought pf the bureaucracy churning out an endless stream of memos and position papers."

More seriously, I think you know that in some parts of the Justice Department, at least, morale among career employees is already rather low, and the turnover rate in the Civil Rights Division, for example, has been disturbingly high.

2. How do you plan to make the transition from the White Hose, where the staff is relatively small and loaded with political appointees, to the Justice Department, where there is a large workforce composed predomnantly of career employees?

[illegible]

You have gotten a lot of criticism for referring to the American Civil Liberties Union as a "criminal's lobby". I am sure you know that the ACLU is actively involved in many areas of law which come within the purview of the Justice Department. I believe that that organization has a great deal to contribute. It has a proud history of defending the civil liberties of all Americans, even those who are unpopular, even the civil liberties of people accused of crime and convicted of crime. I don't always agree with the ACLU, but I often listen to their views, and I think every member of this Committee gives a sincere hearing to their position on matters that come before us.

3. Given the perception of antagonism between you and the American Civil Liberties Union, what steps do you plan to take to dispel this image, and to ensure that the Justice Department maintains an active dialogue with civil libertarians, not just on criminal law issues, but on other matters of mutual concern?

[illegible] -- ENFORCEMENT -- FAIR HOUSING

In the past three years, the Justice Department has filed only six lawsuits under Title VIII of the 1968 Civil Rights Act, charging a pattern or practice of housing discrimination. This means that the burden of enforcing the fair housing laws has fallen overwhelmingly on the shoulders of the victims of discrimination. The expense, risk and delay inherent in federal litigation discourage many of these people from bringing lawsuits to enforce their rights. There is also a great deal of dissatisfaction with the current system of conciliation administered by the Department of Housing and Urban Development. I know the Administration shares my dissatisfaction with the status quo.

4. To improve enforcement of our fair housing laws, do you think we ought to rely more on private enforcement of the right to be free from discrimination, or should we rely more on the government lawyers from the Civil Rights Division to enforce this right?

5. Do you think we ought to be trying to get more of these cases into the Federal courts, or should we be looking for ways to resolve them out of court without sacrificing the interests of the victims of housing discrimination?

6. [illegible] system of private enforcement is not working as well as it should, what should be done to strengthen it? Do you think the Justice Department can work with members of Congress, particularly with the Senators who are cosponsoring S. 1220, to devise an administrative mechanism which will provide efficient, fair and inexpensive enforcement of this important legislation?

GAO REPORT ON MONITORING OF 1965 VOTING ACT

The Attorney General has primary responsibility for enforcing the 1965 Voting Rights Act.

A December 1983 GAO report has concluded that the Justice Department can take positive steps to improve the enforcement and administration of the Act. GAO specifically found that the Department is not satisfactorily identifying changes in voting procedures that are required to be submitted to the Attorney General under Section 5 of the Act, but that are being implemented without ever being submitted. GAO also found several instances where local jurisdictions went ahead and implemented changes despite the Department's objection. Finally, GAO has found that 59% of all jurisdictions submitting the documentation to support a voting change were not submitting all the data the federal regulations require.

The GAO has recommended that the Attorney General modify the Department's procedure for monitoring changes in state and local voting laws to ensure compliance with the Voting Rights Act. The GAO particularly stressed the need for the Department to seek actively to identify those jurisdictions which fail to submit electoral changes for approval.

7. If you are confirmed as our next Attorney General, what steps will you take to insure that the Justice Department actively enforces the Voting Rights Act?

[illegible]

Several civil rights law experts have noted a disturbing trend in the way the Civil Rights Division seeks to redress the grievances of victims of illegal discrimination. The Division is not making use of the tools which the Congress and the courts have given it to fight discrimination and aid victims of discrimination. This is a deliberate decision by the Division to fight with one arm tied behind its back.

For example:

The Federal fair housing law does not require that victims show that discrimination was intentional, simply that challenged practices have a discriminatory effect. The courts likewise have not required a showing of intent to establish a violation. Yet the Civil Rights Division is refusing to file cases unless it feels it can prove discriminatory intent , and is taking the position in cases which it does litigate that intent is required. The result is that violations are not being challenged, and that cases in which violations are challenged are being lost, because the government is requiring itself to surmount a higher hurdle than the law requires.

A similar problem arises in school desegregation cases, in which the Division is refusing to avail itself of the well-established presumption that deliberate discrimination in one part of a school district creates an inference that segregation in other parts of the district is intentional.

8. Do you think it is fair to the victims of discrimination for the government to refuse to use the legal arguments available to it to secure their rights? If not, do you plan to change this policy, and to permit Justice Department attorneys to seek to enforce the civil rights laws to the fullest extent consistent with Congressional [illegible] and judicial interpretation?

[illegible] in 1975, President Ford started to cut back on red tape and bureaucracy. He wanted to get the government off of the backs of business, and he wanted to scale back the federal regulatory agencies. But he never confused this hands-off approach with an eyes-closed approach. He saw strong antitrust laws as a crucial safeguard against price-fixing and other anti-consumer business behavior.

9. The Reagan Administration has continued the deregulation of American business, but it has also cut back on the number of government trust-busters by 25 percent. It also cut back on the Field Offices. As we continue to phase out government regulation, shouldn't we be increasing the size of the antitrust forces to keep business honest?

10. Along the same lines, President Ford personally authorized the Antitrust Division to intervene in cases before the federal agencies to make sure the regulators gave full weight to arguments favoring competition and the free market. If you are confirmed as Attorney General, will you encourage the President to unleash the Antitrust Division and turn it back into the pro-competitive junk-yard watch dog it was under President Ford and President Carter?

[illegible] OF ASSISTANT ATTORNEYS GENERAL

We recently saw the departure of William Baxter as head of the Antitrust Division. He was replaced by the head of the Civil Division, Paul McGrath. Attorney General Smith decided not to send McGrath's name to the Senate for confirmation on the grounds that he was already confirmed as an Assistant Attorney General, although for a different division. **11.** When you take over as Attorney General, will you view your Assistants as interchangeable? When you submit a name of a nominee to head the Antitrust Division, should the Senate grill him or her on Civil Rights as well as Antitrust, just in case you decide at some point to play musical chairs with your Assistants and move him or her over to head the Civil Rights Division?

[illegible]

Many years ago, the Supreme Court said that it clearly violates the antitrust laws for a manufacturer to dictate to a merchant how much the merchant may charge customers for his products. The issue remains an important one today. Yet the Justice Department has exhibited reluctance to enforce the law, and has tried to change the law to allow this type of price-fixing.

Congress forcefully opposed these efforts to allow retail price-fixing. Just last year we passed Senator Rudman's resolution to keep the Administration from trying to make this practice legal. Congress firmly believes that retail price-fixing can lead to higher prices for consumers, and can result in discount stores being driven out of business.

12. (1) If you are confirmed, will you marshal the resources of the Justice Department to enforce the rule that this type of price-fixing violates the antitrust laws?

(2) Would you push the courts to adopt a new rule on this issue that is contrary to Congress' intent?

STATE OIL OVERCHARGE RECOVERY PROGRAMS

As you know, several major oil overcharge recovery cases are in varying stages of the judicial process.

In the past the Administration and Department of Justice supported the right of the states to restitution for their citizens. Just recently, however, the Administration sent legislation to the Congress the effect of which would deposit oil overcharge refunds into the U.S. Treasury instead of effecting restitution to the victims through the States. The bill would apply retroactively to the pending cases.

13. Can you tell us if the Administration has changed its position, and what role you will play on this issue at Justice?

RECORD AND TAPE PIRACY

Almost two years ago, May 24, 1982, President Reagan signed into law the "Piracy and Counterfeiting Amendments Act of 1982", which increased sharply the penalties for film, video tape, and phonograph record "piracy" and "counterfeiting." We enacted this law, with the strong support of the Department of Justice, in the hopes of ending activity which costs the United States hundreds of millions of dollars every year.

14. If you are confirmed as Attorney General, what steps will you take to enforce P.L. 97-180 in the "aggressive" manner contemplated by Congress?

STIONS CONCERNING 1/11/82 LETTER FROM SECRETARY BELL TO MEESE

15. Secretary Bell's letter refers to a "meeting in your office" concerning the Grove City case, involving yourself, Bell, and "Justice Department officials." When did this meeting take place? Who arranged it? Who asked for it? Who attended?

16. On page 2 of his letter, Secretary Bell refers to "your decision," and wonders if the President ought to be informed of it. What decisions were made at the meeting? Did you make any decisions concerning the conduct of the Grove City litigation? Did you make any decisions concerning the conduct of the related "selected cases we will be facing," to which Secretary Bell refers in the first sentence of his letter?

17. During your tenure as Counsellor to the President, has it been a common practice for you to meet with Justice Department officials to discuss the conduct of pending litigation? Please list the dates of and participants in all such meetings, the case or cases which were involved, and briefly summarize the subject matter of such meetings.

18. If you are confirmed as Attorney General, what position will you take with respect to the propriety of meetings at the White House to discuss the conduct of ongoing litigation? Was the participation of Justice Department officials in the meeting referred to by Secretary Bell consistent with the standards of conduct which you would want to see enforced at the Justice Department under your stewardship?

19. Does Secretary Bell's letter accurately describe the ongoing conversations and dialogues between you during that general period of time?

Question 1

RESPONSE OF EDWIN MEESE
TO
SENATOR CHARLES McC. MATHIAS

In response to your question regarding reporting to EEOC:

The EEOC has responsibility for collecting from each of the Federal agencies annual Equal Employment Opportunity Plans for Women, Minorities, and Handicapped Persons. My understanding is that the Department of Justice has indeed provided comprehensive EEO Plans with regard to its hiring record in each of the designated areas, and that those plans reflect continuing progress in the Department's efforts to attract and employ qualified women, minorities and handicapped individuals.

What the Department has not done is include in those submitted plans numerical goals. As Attorney General Smith explained to the Chairman of the EEOC in his transmittal letter accompanying the Department plans:

> "In spite of the best intentions to the contrary, such goals often become, in fact, quotas, by operating to give preference in the hiring process to applicants because of race, sex, religion, or handicap. That is discrimination and that is wrong." (Letter from Smith to Thomas dated July 19, 1983).

If I am confirmed by the Senate, I will certainly review the Department's response for this year to the EEOC's request for employment information and see to it that updated plans are submitted. Attorney General Smith advised last year that "[w]ithin the Department of Justice, we have demonstrated that there is no need to resort to preferential selection devices in order to have true equality in terms of employment opportunity." (Letter from Smith to Thomas dated July 19, 1983). The Department's EEO Plans certainly bear that out. I fully anticipate that the Department will be able to make a similar report this year.

Question 2

ANSWER OF EDWIN MEESE III TO QUESTION OF SENATOR MATHIAS

Role of Attorney General--Career Employees

Contrary to the implications of the question, my approach to career government employees has been one of respect, understanding and acceptance of my responsibility to provide such employees with the leadership that is expected from Federal executives appointed by the President. For the past 25 years I have worked closely with career professionals in city government, county government, state government and in the Armed Forces. As Counsellor to the President and as Chairman of the Cabinet Council on Management and Administration I have championed the cause of good personnel management, have addressed and engaged in dialogue with career employee organizations and have regularly participated in employee recognition events. If confirmed by the Senate, it will be my purpose to promote a high level of morale and esprit de corps among career employees of the Department of Justice through sound personnel management, extensive communication and effective leadership techniques.

Question 3

ANSWER OF EDWIN MEESE III TO QUESTION OF SENATOR MATHIAS

Role as Attorney General -- ACLU

I know of no antagonism between me and the American Civil Liberties Union, certainly not on my part. The quote to which you refer was made in the context of a talk to a law enforcement group in California, explaining the need to continue their legislative advocacy of effective public safety laws since there were organizations, like the ACLU, which usually took the other side of the issue. In answer to your question, it would be my purpose, if confirmed as Attorney General, to provide ready access personally, and elsewhere throughout the Department, to any group or organization that had an interest in discussing matters relating to the Justice Department, its policies and its practices. This is a process which I have maintained throughout my public service, including the past 3 years in the White House. I believe firmly that two-way communication is essential with all public interest groups, regardless of their position on particular issues.

Qu. stions 4,5,6

RESPONSE OF EDWIN MEESE
TO
SENATOR CHARLES McC. MATHIAS

In response to your question regarding Enforcement - Fair Housing:

When this Administration took office, most of the Department's Title VIII enforcement activity had been transferred out of Main Justice to the U.S. Attorneys' offices around the country. Accordingly, the number of fair housing cases handled by the Civil Rights Division dropped from 25 in 1978, to 16 in 1979, to 8 in 1980. When this Administration took office, the Assistant Attorney General for Civil Rights reassessed the transfer decision. Upon learning that few Title VIII cases were being developed in the U.S. Attorneys' offices, he made the decision to reinstate the Division as the principal enforcer of Title VIII. Unfortunately, because of the prior administration's transfer decision, there were not a backlog of housing investigations for the Division to rely upon, and therefore it was compelled essentially to "start from scratch" with investigations of housing discrimination complaints.

Through the concentrated effort of dedicated Division lawyers, I am advised that the Title VIII enforcement activity is beginning once again to approach full strength. Over 100 new "pattern or practice" investigations have been instituted by this Administration and those investigations are now bearing fruit. The Civil Rights Division has filed eleven new Title VIII cases (9 of which were commenced in 1983) and has intervened in one other suit. Two of the most recently filed cases are: (1) a suit against the town of Cicero, Illinois, alleging that town officials have harrassed blacks and intentionally taken steps resulting in an absence of desegregated housing development; and (2) a suit against a major housing developer and manager in California that has utilized a racial quota system to exclude minority tenants. The Department fully expects that more fair housing suits will be filed in the immediate future, as investigations in progress are completed.

In addition, the Division has actively litigated suits inherited from the previous administration. Three cases, including two major land use suits, have been tried; twelve other cases, including one involving allegations of racially exclusionary zoning, have been resolved by consent decree; and three pending cases involving a "pattern or practice" of racial or sex discrimination are being prepared for litigation.

Finally, the Division has also participated in a number of housing cases at the appellate level. For instance, the Department filed an amicus curiae brief in Havens Realty Corp. v. Coleman, 50 U.S.L.W. 4232 (February 24, 1982), a landmark Supreme Court decision affirming the standing of "testers" to sue under Title VIII. And, in United States v. City of Birmingham, the Division successfully argued before the Sixth Circuit Court of Appeals that Birmingham, Michigan had violated the Fair Housing Act by blocking, for racial reasons, the efforts of a private developer to construct low-income housing within the city.

With the recent restructuring of the Division to recreate a separate fair housing Section, I would anticipate the level of enforcement activity in this area to continue to increase.

On your second point, I expect we are in agreement that the existing provisions of the Fair Housing Act are inadequate. The Secretary of Housing and Urban Development has only conciliatory authority and the Attorney General may bring suit only in "pattern and practice" cases. Thus, many individual victims must resort to private litigation to obtain relief. To redress this shortcoming, the President pledged in the State of the Union last year to "develop legislation to improve enforcement of the fair housing laws."

That commitment remains strong. The Administration has proposed legislation designed to strengthen the existing provisions of the statute. While that legislation differs in some respects from the bill you have co-sponsored, S. 1220, there may well be room for some accommodation of the differences. At this stage, I, quite frankly, do not know Senator whether that is the case, but I am certainly willing to work with members of Congress to create a fair and equitable housing bill which will provide better enforcement mechanisms and protect more Americans from discrimination in housing.

Question 7

REPONSE OF EDWIN MEESE
TO
SENATOR CHARLES McC. MATHIAS

In response to your question regarding GAO Report on Monitoring of 1965 Voting Act:

I am advised that the referenced GAO report on the Department's efforts to enforce the pre-clearance requirements of Section 5 of the Voting Rights Act was generally an affirmative one, finding, for example, that (p.8) ". . .decisions have been made in accordance with existing legal standards and established procedures." The report did raise as problems the Department's inability to identify changes required to be submitted before implementation and the failure of jurisdictions submitting changes to document them sufficiently.

It is my understanding that the Civil Rights Division is presently addressing these concerns. First, additional efforts are being made to notify jurisdictions of the duty to submit changes as required by the Act and the Department's intention to seek court orders enjoining implementation of any changes which have not received pre-clearance. Second, in the near future the Department will publish revised guidelines for the administration of Section 5 which, among other things, will specify with particularity the type of documentation that must accompany a submission. In my view, these steps should address the matters raised in the GAO report and, if confirmed, I would see that these efforts are continued.

Question 8

RESPONSE OF EDWIN MEESE
TO
SENATOR CHARLES McC. MATHIAS

In response to your question regarding fair housing:

Based on the information I have to date, Senator, I believe that the Civil Rights Division is in fact making full use of the tools which Congress and the courts have given it to fight discrimination. The Division has not chosen, as you suggest, "to fight with one arm tied behind its back."

In the area of fair housing, the Supreme Court has not yet resolved the proper standard of liability under Title VIII, and the various lower courts have produced a variety of conflicting interpretations. While there are a few cases that have found a violation of the Fair Housing Act solely because of disparate effects, most courts, while acknowledging that an "effects" standard has been used in a Title VIII context, have ultimately rested their decision on a finding of wrongful intent. In reaching this decision, recognition has generally been given to the fact that evidence of "discriminatory effects" can assist in establishing an inference of wrongful intent sufficient to make out a Title VIII violation.

It is my understanding that, on the basis of this judicial authority, the Department has proceeded under Title VIII on proof -- whether direct or indirect -- of an intentional violation. The Act's language supports such an approach (42 U.S.C. §3604(b)), and there is nothing in its legislative history to suggest that Congress had a different understanding of the statute that would allow it to reach acts having an unintended racially disparate impact.

If confirmed as Attorney General, I shall insist that the Department continue to enforce the fair housing laws vigorously, using all the legal tools that are available. In this connection, it should be noted that the Civil Rights Division has recently reorganized and there now exists a separate section in the Division devoted largely to the enforcement of Title VIII.

Regarding school desegregation, there has been widespread misunderstanding about the Administration's willingness to use or not use the so-called Keyes presumption, i.e., that proof of intentional segregation in a substantial portion of a school district will support an inference that all other racial imbalance in the system is also purposeful. This rule is one that shifts the burden of proof during the trial of a school desegregation case to the school authorities, compelling them to prove that the inference of district-wide de jure segregration is inaccurate. The Department of Justice continues to use this trial tool, and indeed has done so without interruption throughout the tenure of this Administration. Nor have there been any plans to discontinue reliance on the Keyes presumption. In the Yonkers litigation, for example, that is currently pending, the Department has unambiguously advised the Court of the applicability of Keyes as requiring a shifting of the burden of proof to the City.

The Assistant Attorney General for Civil Rights has addressed a different point -- that is, the use of Keyes presumption, not as a trial tool, but "[i]n deciding to initiate litigation." As he has explained on several occasions, prior to litigation, during the Department's investigation of the facts, the Keyes presumption will not be given any weight; however, once suit is filed, this "tool" will be used fully. I find this analysis and application sound and do not contemplate changing it. Indeed, the Sixth Circuit Court of Appeals recently discussed the Keyes presumption in just such terms in Alexander v. Youngstown Board of Education, 675, F.2d 787 (6th Cir. 1982), pointing out that there is no authority for using the Keyes presumption prior to an evidentiary showing at trial of de jure segregation with respect to some schools within the school district.

Questions 9, 10

RESPONSE OF EDWIN MEESE
TO
SENATOR CHARLES McC. MATHIAS

In response to your question regarding cutbacks of personnel in the Antitrust Division:

The Antitrust Division's staffing reductions reflect, in part, the termination of two major cases, U. S. v. AT&T and U. S. v. IBM. More importantly, these reductions reflect the efficiencies resulting from greater use of computer and word-processing support, the application of sophisticated economic analysis in the early stages of investigations and general management improvements.

While there has been a reduction in the Antitrust Division's staff during the past few years, there has been no abatement in its enforcement efforts. Under the Reagan Administration, antitrust enforcement has focused upon clearly harmful cartel-type behavior that restricts competition among competitors, such as minimum price fixing, horizontal market allocations, bid rigging and other comparable agreements. We vigorously prosecute such activity criminally, and seek indictment of responsible individuals wherever possible and recommend jail sentences and substantial fines as a matter of course to punish past conduct as well as to deter it in the future. Indeed, Fiscal Year 1983 produced a record number of criminal cases -- 98. Total fines recovered and jail time actually served has also substantially increased during the present Administration: In Fiscal Year 1983, I understand the Department recovered fines of approximately $21,000,000 and jail sentences in excess of 216 months actual incarceration have been imposed in antitrust cases.

The Department of Justice under the Reagan Administration has not cut back its efforts at deregulation. In fact, deregulation continues as one of the priorities of our antitrust policy. Governmental interference in the market in the guise of regulation that inhibits competition is as objectionable as private horizontal agreements that serve no purpose other than to restrain competition. As a consequence, despite staffing reductions the Department's participation in regulatory proceedings has remained at a constant level during this Administration.

At the same time, however, our antitrust enforcement policies have recognized that many types of business conduct in the non-per se area have beneficial, procompetitive effects. Such activity must carefully be evaluated to determine its overall economic effects. An overly restrictive enforcement policy that deters efficiency-enhancing conduct not only wastes scarce enforcement resources but also deters firms from engaging in conduct that could benefit our economy and consumers. Thus, our policy has been to avoid governmental interference with business arrangements that do not pose competitive concerns.

Question 11

RESPONSE OF EDWIN MEESE
TO
SENATOR CHARLES MATHIAS

In response to your question regarding fungibility of Assistant Attorneys General:

The interchangeability of Assistant Attorneys General is based upon a statute, i.e., Title 28, §506 of the United States Code, which provides that the President shall appoint, with the advice and consent of the Senate, ten Assistant Attorneys General. The law does not create a separate position for each division or office. I am informed that Assistant Attorneys General, once confirmed, have typically been assigned to particular divisions or offices within the Department by Attorney General Order.

It is my understanding that on a few occasions over the years, Assistant Attorneys General have been reassigned from one division or office to another. I should add, however, that this has been a relatively infrequent occurence and has only happened when someone was apparently well qualified to undertake a different responsibility in time of need and was willing to do so. I have no present intention of making any such personnel adjustment and I am aware of no existing circumstances which would recommend such a decision. Ultimately, of course, I would defer to the President to determine whether and by whom a vacant position should be filled, particularly in the case of a new appointee.

Question 12

RESPONSE OF EDWIN MEESE
TO
SENATOR CHARLES McC. MATHIAS

In response to your question regarding resale price maintenance:

1. The Supreme Court has recognized that most non-price vertical arrangements can have beneficial effects and has determined that their legality should be analyzed under the rule of reason. It is clear, however, that under current case law resale price maintenance agreements are per se unlawful. Thus, unless and until the Supreme Court changes its interpretation of the antitrust law as it relates to resale price maintenance, we will enforce the per se rule as it currently stands.

Assistant Attorney General McGrath has made it clear to the staff of the Antitrust Division that the Department will enforce existing legal precedent holding agreements between manufacturers and distributors regarding the price at which the manufacturers' products are to be resold to be unlawful per se. We will evaluate whether to challenge such agreements as we do other potential cases, taking into account the factual circumstances presented, the sufficiency of the evidence, the amount of commerce involved, the likelihood that we would prevail, and other factors that generally play a part in the sound exercise of our prosecutorial discretion.

2. As you are aware, the Department of Justice filed an amicus brief in Monsanto Co. v. Spray-Rite Service Corp., asking the Supreme Court to reexamine its prior holdings that resale price maintenance agreements are unlawful per se. While the Department continues to stand behind that brief, I do not contemplate any further efforts on the part of the Department to change the per se rule against resale price maintenance.

Question 13

RESPONSE FROM EDWIN MEESE
TO
SENATOR CHARLES McC. MATHIAS

In response to your question regarding state oil overcharge recovery programs:

Your question assumes that, in the past, the Department of Energy has consistently favored distribution of overcharge funds to the states for funding of energy-related programs to the exclusion of other remedies. This is not correct. In adjudicated overcharge cases and in settlements, a variety of remedial measures have been employed depending upon the particular facts of the case. These remedies have included direct payments to the Treasury, the establishment of company administered claims funds, the delivery of crude oil to the Strategic Petroleum Reserve and utilization of administrative proceedings before the Department of Energy to refund amounts to injured direct and indirect purchasers, as well as payments made directly to the states to fund energy-related programs.

The legislation that has been submitted provides that, insofar as the Department of Energy cannot identify through an administrative mechanism persons or entities that sustained economic injury as a result of overcharges for purposes of direct restitution, overcharge funds would be disbursed to the states to fund energy-related programs. We have submitted this legislation in order to obtain Congressional guidance to regularize the choice of remedies for funds that are now in excess of $2 billion. This Administration continues to favor payments to the States as a remedy to the extent that individuals or companies injured by overcharges cannot reasonably be identified.

Question 14

RESPONSE OF EDWIN MEESE
TO
SENATOR CHARLES McC. MATHIAS

In response to your question regarding record and tape piracy:

If I am confirmed as Attorney General I would take the following steps to assure aggressive and effective enforcement of the criminal laws enacted to combat piracy and counterfeiting of phonograph records, tapes and films.

(1) Coordinate with representatives of the recording industry, who are the victims in tape piracy and counterfeiting cases to ascertain the existence of prosecutable violations.

(2) Coordinate with the United States Customs Service to assure that all reasonable efforts are made to detect and seize counterfeit records, tapes and films imported into the United States.

(3) Assure that major cases involving counterfeiting and piracy receive appropriate and timely attention by federal prosecutors and agents.

(4) Assure that up-to-date legal advice is provided to U.S. Attorney's offices regarding developments in the law relating to these types of cases.

Questions 15, 16, 17, 18, 19

ANSWERS TO QUESTIONS FROM SENATOR CHARLES MATHIAS RE
11 JANUARY 1982 LETTER FROM SECRETARY BELL TO EDWIN MEESE

1. The meeting referred to in Secretary Bell's letter of 1/11/82 took place on 4 January 1982. Although our records do not show who arranged it, it was most likely arranged by my scheduling secretary, who at that time was Florence Randolph. The meeting was asked for by the Departments of Justice and Education. Our records show that those who attended the meeting were Secretary Bell, Clarence Thomas, Willian Clohan, Edward Schmults, William Bradford Reynolds, Craig Fuller, Kenneth Cribb and myself.

2. The meeting with me was requested by Education and Justice to help resolve a disagreement between those departments as to whether Pell Grants constitute "federal financial assistance." (I am frequently called upon to help arbitrate policy differences among the various departments.) This question is an example of an overarching policy matter that may arise in the course of particular litigation, but which affects more than one department and which, once decided, may have impact upon other cases and other policies.

In this instance, we came to the conclusion that Pell Grants do constitute "federal financial assistance," thereby adopting the more expansive interpretation urged by DOJ and opposed by the Department of Education. Also considered was a change in the Pell Grant regulations to a system whereby payments would be made directly to students. Secretary Bell subsequently determined that this change was not administratively practical.

I did not make any decisions in "selected cases we will be facing." I assume that Secretary Bell is referring to other cases where the same overarching policy question is presented.

3. It has been and continues to be the policy and practice of the Reagan Administration not to meet or discuss the "conduct of pending litigation" with the Department of Justice. No doubt many policy decisions made in the White House, in the Cabinet system, or through agreement among the departments have had impact on particular cases. Such policy decisions are made continually and are too numerous to attempt to describe; in any event, these are not decisions on the "conduct of pending legislation."

4. If confirmed, I would continue the Reagan Administration practice of discussing only matters of policy with the White House, leaving the conduct of any litigation involving those policies within the Department of Justice. The participation of Department officials in the 4 January 1982 meeting was consistent with that practice.

5. Secretary Bell's letter is contemporaneous with the events in question and is more detailed than my recollection of those events. Nothing in his letter is at odds with my memory.

Attachment I

QUESTIONS FROM SENATOR PATRICK LEAHY
TO EDWIN MEESE III

1. Mr. Meese, the Justice Department last week challenged actions of officials in Birmingham, Alabama, who were taking steps to enforce a decree that the Department signed three years ago in settlement of a discrimination suit. The suit had been started to help blacks and women to win promotions in the city's police and fire departments, and it is clear that the Department was instrumental in fashioning a settlement.

Now the Justice Department seems to have switched sides and is favoring those who are attacking this long-settled court order.

If you are confirmed and serve as Attorney General, are you going to take steps to end what appears to be a Department policy of questioning discrimination orders that have resulted from hard-fought and often protracted litigation?

2. In the hearings we discussed a letter Mr. Newman of Sunkist sent to you asking for a change in government policy on market orders on citrus, in which he raised as a consideration that the agricultural block might well not support Republican candidates on election day. I then asked what you would do if you received a similar letter as Attorney General when you were considering some action. You said you thought you would make a response affirmatively that in the decision on these matters, the political implications are not a proper subject for consideration by the Department of Justice.

Would you elaborate on what sort of letter you would send?

Would you release copies of the correspondence to the public?

If the answer is different with respect to the incoming and outgoing letters, would you so specify in your response?

3. You told me at the hearing that you do not recall anyone from Sunkist or representing Sunkist approaching you or anyone on your staff regarding EDB, but that if you were to find that anyone had, you would let me know. I would like to broaden that to request that you affirmatively inquire whether any citrus representative approached your office and whether your office had any responsibility for setting up meetings between Mr. Todhunter and citrus representatives regarding EDB. The meetings to which I refer took place in 1981 and 1982 before the EPA decided not to proceed with a ban on EDB. Mr. Ruckert, a colleague of Mr. Jim Lake, was reported to have said that the citrus representatives' efforts to permit continued use of EDB had "some impact." (See N.Y. Times January 31, 1984, A1, A19.)

4. Following up on a question asked by Senator Mathias on the District of Columbia, with regard to the legislative veto, you may know that some 13,500 criminal prosecutions (of which 9,576 are convictions) currently are in jeopardy in the District. As the situation stands, it is possible that some or all of these criminals could be released and allowed back on the streets. As I understand the current status of these cases, the Justice Department will have to decide between arguing that 7,680 drug convictions are invalid or that 185 sexual assault convictions are invalid. Have you been briefed on this matter and do you have a view on which way the Department should go?

5. The last ten Attorneys General have testified that they believe the one House legislative veto to be unconstitutional. Now that the Supreme Court has proven them right, we have to get to the policy question of whether it is a good idea.

Would you support a constitutional amendment to permit a one-House legislative veto over agency rulemaking decisions?

6. Senator Mathias asked you several questions concerning National Security Decision Document '84. I would like to follow up on that by asking several specific questions.

You testified that you would like to work out "an accommodation... with the members of Congress which reflects the mutual concerns of the Administration for the preservation of national security information on the one hand and the desire on the part of members of Congress to protect the individual's right to privacy and freedom of expression on the other." What do you believe the Administration's role is, as opposed to that of Congress, in protecting individuals' rights to privacy and freedom of expression?

The Directive places a great emphasis on the polygraph, and obviously the President believes that the polygraph is a useful and reliable device. Others believe that sutdies cast doubt on its reliability and that, reliable or not, it exacts a very high cost in privacy and personal dignity for the benefits it may provide. I would appreciate your comments on the use of the polygraph, both in Directive '84 and generally in law enforcement.

The State Department Authorization for FY '84 and '85 contained a section (Sec. 1010) barring the enforcement of Directive '84 until April 15, 1984. What were the main motivations for shelving parts of Directive '84 earlier this month?

Do you believe that the President has the authroity to reimplement the Directive at any time in the future without further legislation? Do you believe he ought to do so?

Don't you think that the Directive is one that warrants affirmative legislation before it becomes effective?

Shouldn't the President ask for a bill and then come here and justify why it's needed?

Wouldn't that course of action have a much better chance of gaining public acceptance?

7. Apart from whether any court is correct that the specific facts of any involvement in the decisions on prosecuting draft non-registrants would constitute wrongful selective prosecution, are you aware that two judicial officers who have thoroughly reviewed _in camera_ the docuemnts released to them by the White House drew the conclusions expressed in the opinions which I have attached?

Before any prosecutions of draft non-registrants began, did you have knowledge of the government's intended strategy in selecting those who should be prosecuted for failure to register for the draft?

4. 67

FILED

NOV 15 1982

LERK, U. S. DISTRICT COURT
TRAL DISTRICT OF CALIFORNIA

DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

United States of America,
Plaintiff,
v.
David Alan Wayte,
Defendant.

CR 82-630 TJH

ORDER
AND
OPINION

Background

Defendant David Alan Wayte was indicted on July 22, 1982 for failure to register for the draft under section three of the Military Selective Service Act ("Act"), as amended, 50 U.S.C. App. § 453. Wayte had previously written two letters to the President expressing his opposition to draft registration and his intention not to register.

Defendant moves this court to dismiss the indictment on several bases. First, defendant urges this court to dismiss the indictment on the ground that the Government has refused to comply with this court's Order of October 29, 1982.[1]

enforcement programs. Mr. Meese was particularly concerned with this topic. Obviously, the passive program was less expensive to implement. Although an active enforcement program has been considered by the Government for about a year and a half, it is not yet in operation. An effort by the Government to save money is not adequate justification for violating a person's first amendment rights.

Numerous references have also been made regarding the effect of the first prosecutions on other non-registrants. It was felt that the first wave of prosecutions would encourage other non-registrants to register. Since the passive program was designed to prosecute only those most adamant in their refusal to register, indicting only vocal non-registrants made tactical sense. This would presumably have the greatest impact and result in significant numbers of men registering for the draft. However, as *Steele* and *Falk* make clear, this policy violates the first amendment rights of the vocal non-registrants by selecting them, alone, for prosecution. The Government still retains a significant amount of prosecutorial discretion in deciding whom to prosecute. There is nothing in this decision to suggest otherwise. When this discretion is exercised, it must be done in a non-discriminatory manner.

While the Government refused to turn over certain documents to the defendant, it did make these documents available (in expurgated form, initially) to this court for an *in camera* inspection. After scrutinizing these documents, the court is reinforced in its belief that the nexus between the White House, through Mr. Meese, Selective Service, the Task Force

Department of Justice, which existed at the time the *prima facie* finding was made, is still extant.

After carefully analyzing the arguments advanced by both parties, this court has determined that the *prima facie* finding has not been rebutted. Therefore, this court must grant defendant's motion to dismiss the indictment on the basis of the Government's policy of selective prosecution.

III. Selective Service Registration: Statutory Scheme

Defendant contends that the Military Selective Service Act ("Act"), 50 U.S.C. App. §§ 451 *et seq.*, standing alone, does not establish the basis for criminal liability for one who refuses to register. In pertinent part, 50 U.S.C. App. § 453 provides:

> Except as otherwise provided in this title, it shall be the duty of every male citizen of the United States, ... who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner as *shall be determined by proclamation of the President* and by *rules* and *regulations* prescribed hereunder...

(emphasis added).

As indicated above, Congress expressly provided both that the executive branch should determine the appropriate time, place and manner for registration and that such decisions be expressed in rules, regulations and proclamations. In the case at bar, the indictment itself charges def

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

UNITED STATES OF AMERICA,

Plaintiff,

v. **ORDER**

GILLAM KERLEY, a/k/a
DAVID GILLAM KERLEY, 82-CR-47-D

Defendant.

- -

Now before the court is defendant Kerley's motion for discovery of certain government documents that Kerley claims are material and necessary to his pursuit of his motion to dismiss the indictment on the ground of unconstitutionally selective prosecution. The government has opposed the motion on several grounds: it has disputed the materiality of the documents under Rule 16(a)(1)(C), FED.R.CRIM.P.; it has claimed that some of the documents are immune from discovery under the attorney work-product exception of Rule 16(a)(2); and it has invoked a claim of executive privilege against discovery of certain other documents. Decision on this motion requires both a reconsideration of earlier oral discovery orders as to some materials and a first-time consideration of other documents, as the following background description will explain.

BACKGROUND

At hearings in this case on March 4 and March 10, 1983, I rendered oral decisions on the remaining disputed aspects of defendant Kerley's motions for discovery in this criminal prosecution for draft non-registration.

representation that the indicated attachments cannot be found. The government has voluntarily provided Kerley with complete copies of docs. ##2, 15, 17, 19, 21, and 25, and the motion is moot as to these requests.

The Wayte Documents

I have completed an exhaustive and exhausting *in camera* review of the Wayte documents; *i.e.*, the edited and unedited executive branch staff papers and reports and the transcripts of certain meetings of the Presidential Military Manpower Task Force. I conclude that the documents are plainly material to Kerley's selective prosecution claim. Although they tend to indicate, as the government has argued, that neither the White House nor the Presidential task force were involved in the particular decision to prosecute Kerley, they also tend to demonstrate that policy for the Justice Department's ultimate selection of defendants was set or significantly influenced by decisions made in those high executive branch forums. The materials furthermore demonstrate a consciousness within those forums of the significance of selecting vocal opponents of the draft for prosecution.

Having concluded that the Wayte documents are highly material to defendant's selective prosecution claim, I am obliged to consider the government's claim of executive privilege asserted in opposition to the requested discovery of these documents. I have assessed the validity of the government's claim pursuant to the required standard set forth in United States v. Nixon, 418 U.S. 683 (1974). And I have concluded after applying the Nixon balancing test, that the greater weight in this case lies with defendant's interest in obtaining access to the materials in order to prepare for the prosecution of his own claim of unconstitutionally selective prosecution. I do not underestimate the need for

RESPONSE OF EDWIN MEESE
TO
SENATOR PATRICK LEAHY

1. In the Birmingham case, I am advised that the Justice Department was invited by the presiding federal district judge to participate in the case through intervention. As with most such court-initiated invitations, the Department accepted and advised the court that it would participate in the case through nominal intervention on behalf of the white plaintiffs. My understanding is that such a response is consistent with the Department's usual practice in civil rights cases of intervening on behalf of those who have allegedly been victimized by discrimination, rather than on behalf of those who have allegedly discriminated.

In its letter acceptance of the court's invitation, however, the Department stated clearly that it should not be misunderstood as taking any position on the merits of the plaintiffs' claims at the present time; that it was, in essence, withholding judgment on the allegations until it had completed its independent investigation and compiled all of the relevant facts. I am also advised that the Department has made clear on the record that it has no intention of attacking the validity of its consent decree with Birmingham but, rather, will defend the validity of the decree and all remedial measures required by it.

In response to your more general question, I anticipate no change in the Department's present policy of opposing race-conscious remedial plans designed to confer on nonvictims of discrimination preferential treatment solely because of their race. As you know Senator, it is the view of this Administration that the use by public employers of such race-based preferences constitute unlawful discriminatory action, whether they are adopted on the heels of "protected" litigation or after the most abbreviated settlement talks. As Attorney General, it would be my obligation to enforce the civil rights laws on behalf of all individuals, not just those who belong to certain racial or ethnic groups or are of a particular gender. Thus, if a court ordered an employer to go beyond "make whole" relief for actual victims of the proven discrimination and prefer some individuals over other individuals on the basis of race or sex or some other equally irrelevant characteristic, I would have no hesitance to challenge that preference as unconstitutional and illegal.

#2. Although I reaffirm my answer given at the hearings, which is correctly quoted in your question, I am unable to elaborate on what sort of letter would be sent or speculate as to whether it or the incoming letter would be released without having before me the specifics of a given case.

The important factor here, I believe, is that as Attorney General I would decide matters on the merits of the issue without regard to political consequences.

#3. To the best of my recollection and knowledge, no representative of the citrus industry approached me or my office regarding EDB, and neither I nor my office arranged a meeting concerning that subject between Mr. Todhunter and citrus representatives. In answering this question, I discussed the matter with my staff and had a search made of the files maintained by my office.

#4. The Department of Justice has determined that the Supreme Court's opinion in Immigration and Naturalization Service v. Chadha applies to the District of Columbia Self-Government and Governmental Reorganization Act, and that the legislative veto provision in that act is accordingly unconstitutional. The Department has also determined, however, that this does not mean that any criminal convictions must be overturned. The positions of the Department, and the legal analysis supporting those positions, have been fully developed in briefs filed in pending cases raising these very questions. Since those cases are pending before the courts, it would be inappropriate for me to elaborate on the arguments as articulated in the briefs. I have not yet had the opportunity for detailed personal legal analysis or for the formulation of views beyond the current position of the Department.

#5. I think it is premature to consider a constitutional amendment to overturn the Supreme Court's decision in Immigration and Naturalization Service v. Chadha. We need more experience with relations between the Congress, the Executive Branch, and the independent agencies in the post-Chadha era before we can intelligently evaluate the need for such a major change in the Constitution. Administration spokesmen have testified that we are committed to approaching questions concerning the impact of the Chadha decision in a spirit of comity, with all due respect for the constitutional responsibilities of the respective branches. I think it behooves both the Congress and the Executive Branch responsibly to deal with any difficulties that arise in this area with such mutual respect before considering overturning Chadha by a Constitutional amendment.

#6. Both the Administration and Congress share a responsibility to protect the national security as well as individual rights to privacy and freedom of expression.

With appropriate safeguards, polygraph testing can be useful in certain kinds of investigations. CIA and NSA have used polygraphs for many years as part of their personnel security programs. However, any use of the polygraph by the federal government should be limited to situations where there is a demonstrated need for this technique, it is subject to safeguards carefully designed to protect the privacy and dignity of persons who are to be examined, and testing is conducted by competent, trained professionals.

The protection of national security information is a fundamental constitutional responsibility of the President. This authority has traditionally been exercised through Executive Orders and directives creating a system of classification and providing administrative safeguards for classified information. Such authority includes the measures contained in this Directive.

Paragraphs 1(b) and 5 of the Directive are being held in abeyance so that the Administration can seek the cooperation of Congress in developing a bipartisan solution to the serious problems caused by unauthorized disclosures of classified information.

The President has obviously decided that it would be preferable to seek the cooperation of Congress in solving this problem, and I believe this course of action should be followed if possible. In the past month, Administration witnesses have testified in closed sessions of congressional committees concerning the damage caused to national security by unauthorized disclosures of classified information. We would certainly support legislation that responsibly addresses this problem. As you note, such a course of action has a better chance of gaining public acceptance.

#7. I was generally aware of the conclusions reached by the District Court in United States v. Wayte. I do not recall being aware of the specifics of opinions rendered in any other cases.

I am advised by the Department of Justice, however, that White House documents have been submitted for ex parte, in camera inspection in the course of selective prosecution hearings held in four selective service non-registrant cases.

The initial case in which the documents were submitted was United States v. Wayte, (C.D. Cal.). As the Committee is aware, the District Court judge concluded that some of the documents were relevant to the selective prosecution issue, and thereafter dismissed the prosecution based, in part, on a finding of impermissible selective prosecution. The Government appealed and the Court of Appeals for the Ninth Circuit reversed the District Court decision, concluding that the defendant had failed to make the required initial showing of impermissible selective prosecution.

The documents were next produced in United States v. Ford, (D. Conn.). Prior to ordering the documents produced for his ex parte, in camera inspection, the District Court judge stated that the defendant had failed to meet his burden of producing some evidence tending to show impermissible selective prosecution. The Court further stated, however, that in light of the then recent District Court decision in Wayte, it wished to examine the White House documents produced in Wayte. Following that examination, the Court announced that it was not persuaded that the documents were relevant to the defense of selective prosecution. Subsequently, that Court rejected the defendant's selective prosecution claim. In its opinion, the Court noted that of the four District Courts that had then ruled on the selective prosecution issue, in the context of a selective service non-registrant prosecution, only the court in Wayte had ruled against the Government. Referring to the three rulings that were contrary to Wayte, the Court stated that "This Court also refuses to draw an unsupported inference that the Government's motive in establishing the 'passive' enforcement system was an improper one."

The White House documents were next submitted for ex parte, in camera inspection in United States v. Kerley, (W.D. Wis.). The documents were reviewed by a magistrate who, on October 26, 1983, ordered that some of them be disclosed. The Government has appealed that ruling to the District Court and the decision of that Court is still pending.

The final case in which the White House documents were submitted for ex parte, in camera review is United States v. Rutt, (E.D. Mich.). The court's conclusion relating to the documents is presently pending.

So, to date, the only district court decision relating to the White House documents that was adverse to the Goverment was the one reversed by the Ninth Circuit Court of Appeals. Another district court decision on the same issue found that the documents were not relevant to the selective prosecution issue. The issue is presently pending in two other district court proceedings.

I had no part whatsoever in the formulation of the Government's intended strategy in selecting those who should be prosecuted for failure to register for the draft. Although it is possible that some information about such strategy could have been brought to my attention at some point prior to the initiation of prosecutions, I have no recollection of that occurring.

Attachment J

QUESTIONS FOR MR. MEESE SUBMITTED BY SENATOR BIDEN

1. As you will recall, during the hearings you were questioned extensively by me and others about your political role in the 1980 campaign and in the White House and how that might affect your role as Attorney General. In my questioning of you about the so-called Bentsen Amendment I never asked you precisely how you would interpret that language and why you feel it would not apply to your nomination.

a. Please explain what your interpretation of the so-called Bentsen language would be were it the law of the land. What would your answer be, if the Bentsen amendment were the law of the land, and you were required to give the President an opinion of which officials (by name) of the 1980 campaign would be permitted to be appointed Attorney General or Deputy Attorney General and which would not?

b. Please distinguish the functions of those who might be disqualified under your interpretation of the Bentsen language from those which you performed.

c. Since I assume that as "Chief of Staff" of the campaign you supervised in a general sense all of the functions of the campaign please explain why such supervision would not disqualify you under the so-called Bentsen language.

2. I also questioned you about your role in the Bob Jones matter. The central issue that I was getting at in that line of questioning was whether you appreciated the difference between being on the White House staff and discussing these issues and being Attorney General, and the proper role of the President in individual cases pending at the Department of Justice or in the courts. A few points need to be clarified:

a. As I understand your testimony, even though the President in his news conference on January 19,1982 stated that he originated the idea for the administration's initial position on the Bob Jones matter and that he indicated in his personal log sometime before December 18 that he agreed with Congressman Lott, that neither you, nor to your knowledge anyone in the White House,took any action to implement the President's decision? Do you think it would have been inappropriate for anyone in the White House to pass the President's opinion on this case to officials in the Department of Justice? If so under what circumstances and to which officials?

I also asked you whether you thought it appropriate for the President to express an opinion on a pending case. You responded:

> "If a President has a policy which is either at odds with the state of the law on one side or other of a particular controversy, then I think it is proper for that policy position to be expressed by the President to the Attorney General and for the Attorney General to consider that when he is preparing the pleadings of the federal government on that matter."

I'm not sure I understand or agree with that distinction. For example, one of the issues which led to the impeachment of President Nixon was his interference with Justice Department litigation, then pending in the Supreme Court in the so-called ITT case. There are White House Tapes indicating that President Nixon ordered the acting Attorney General Kliendienst to "drop the case". Please distinguish the Bob Jones matter from the ITT case in terms of Presidential interference in decision-making. In other words assume that the President had called the Attorney General or Deputy Attorney General directly and told them to abandon the traditional position on tax exempt status. Is this different in any way from what happened in the ITT matter? If so, how is it different?

3. I would like you to make certain assurances regarding actions you will take to insulate the Department of Justice from the political decision-making process at the White House.

(a) Will you pledge not to engage in 1984 election activities?

(b) Will you agree not to be involved in party, candidate and other political strategies while serving as Attorney General?

(c) Having in mind the duty to maintain the independent, evenhanded law enforcement responsibilities of the Attorney General, would you please describe the proper relationship between the President and the Attorney General on matters of policy? On specific cases?

(d) What specific steps will you take to protect against improper interference from the White House?

(e) Will you continue the Department policy of adhering to the guidelines, implemented in 1978, that are designed to limit White House and congressional contacts with Justice Department attorneys regarding case matters? Would you please provide me with a copy of those guidelines?

RESPONSES OF EDWIN MEESE III TO QUESTIONS SUBMITTED BY SENATOR JOSEPH BIDEN

1a. Assuming the so-called Bentsen Amendment were adopted in its present form, it would appear, by its own terms, to delineate those specific campaign positions which would automatically exclude someone from appointment to the positions of Attorney General or Deputy Attorney General. This proposal is predicated on the concept that certain campaign officials incur obligations which *per se* disqualify them from appointment to high office. My personal view is that there should be no blanket exclusion (a bill of attainder if you will) of a class of persons from appointed office. Each individual should be examined and judged on the basis of his own qualifications and background.

The individuals who would have been excluded under the specific language of the Bentsen Amendment are: Senator Paul Laxalt, National Campaign Chairman; Ambassador Daniel Terra, National Finance Chairman; and Ambassador William Brock, National Party Chairman. The only other individual to whom this proposal would apply is William Casey, the former campaign director. I wish to point out, however, that each of these individuals discharged their campaign responsibilities according to the highest standards and did nothing which should deny them any public office.

1b. As mentioned above, I disagree with the premise of the Bentsen Amendment that certain individuals, because of their leadership role in a campaign, should automatically be excluded from appointed office. Further, as I testified during the hearing, I have incurred no obligations of any kind to political leaders or other individuals which would affect my impartiality in administering the laws, if confirmed as Attorney General.

1c. My role in the campaign was chiefly as policy coordinator and the organization and management of the headquarters staff. I had no general fundraising responsibilities. I was not primarily responsible for the budgeting or spending of monies, and I did not supervise political field operations or "delegate-hunting" activities. My role was clearly distinguishable from those denominated campaign officials who might be perceived to have incurred obligations which could create the appearance that certain official actions are based on political commitments rather than on appropriate legal and policy grounds. Again, rather than legislating a blanket exclusion, I believe that the Senate should exercise its Constitution prerogative through the advice and consent process to assure the public that a nominee to the position of Attorney General will discharge the obligations of that office in a fair and impartial manner.

2. Both parts of this question (as well as some parts of question 3) involve the appropriateness of contacts between the President and the White House staff on the one hand, and the Attorney General and the Department of Justice on the other, on pending matters. The short answer to the general question is that I do not think it is necessarily or *per se* "inappropriate" for the President and members of the White House staff to communicate with the Attorney General and other responsible officials in the Department of Justice as to the President's views in cases where the Government must take a position on issues that raise important questions of law and policy. As your question suggests, however, the answer in any particular case depends very much on the circumstances and the purpose of the contact. Moreover, because the concerns you raise are important ones that do not lend themselves to a simple, categorical response, I want to respond fully and in some detail.

My knowledge and understanding of what in fact took place with respect to the Bob Jones University case has been covered both in my testimony and in my responses to written questions from Senator Edward Kennedy. But in response to the hypothetical question you pose about that case, it was one where the legal issue involving whether the Internal Revenue Service had statutory authority to deny tax exemptions to discriminatory private schools had not been definitely settled by the Supreme Court. The district court had said no, as had the dissenting judge in the Fourth Circuit, and at least four Justices of the Supreme Court -- the minimum required to grant certiorari -- apparently thought that the question was sufficiently unresolved that certiorari should be granted. Legal arguments could be and had been made on both sides of the question. There was general agreement about the policy objective that discriminatory schools should not be given tax exemptions; but there was obviously disagreement as to the legal and policy questions raised by IRS implementation of that objective under a statute that did not squarely address that issue, if at all.

In such a case -- where the Government as represented by the Department of Justice must take a position in the Supreme Court on important issues that the Court itself thinks merit review -- I do not believe it would be inappropriate for a President, as the elected head of the Executive Branch of the Government, to discuss his views on the legal and policy issues involved with the Attorney General and other Cabinet members who may be involved in the matter. Nor do I think it would be improper for appropriate persons on the White House staff to be involved in reviewing the legal and policy issues involved in such a case with appropriate officials of the Department of Justice and other departments or agencies that have an interest in the matter. As you know, important and unresolved legal and policy questions very frequently are presented in the context of litigation, and the position an Administration takes on those questions will in turn be expressed in the position the Government ends up taking in that litigation.

There is nothing untoward per se about the President and members of his White House staff being involved in the deliberative process by which such decisions are made. To the contrary, as the head of the Executive Branch, the President bears the ultimate responsibility for the legal and policy positions his Administration takes, in court or elsewhere. And indeed, to return to your choice of the Bob Jones case as a hypothetical, I believe the testimony in Congressional hearings about this subject in February 1982 indicates that the White House under President Nixon was very much involved in the legal and policy decision made in the early 1970's, also in the midst of pending litigation, that the IRS would reverse its prior policy and begin to deny tax exemptions to discriminatory private schools.

Having said that, it is very important also to emphasize that I am and, if confirmed as Attorney General, will continue to be very sensitive to the kinds of concerns I believe you are raising in this question, which can be illustrated by some specific examples.

First, the Attorney General is obligated -- to the President who appoints him, to the Senate that confirms him, and to the citizens he serves and represents -- to give his best, most thoughtful, candid and independent legal judgment and advice on the legal questions presented to him. It goes without saying that that judgment and advice should not and must not be affected by the identity of the parties involved in a given case or by any partisan political implications the decision he reaches may have. If he believes the law on a given question is clear, that is what his advice must be. Similarly, if he believes, with respect to judicial precedent, that there is no good faith basis for arguing that a court should reconsider its prior decisions, that is the position he must take.

Second, it would be inappropriate for a President or members of the White House staff to attempt to influence the Attorney General or the Department of Justice to take a position in a pending matter for the purpose of achieving a particular outcome or result for any party involved in that matter. Obviously, of course, when the President, members of his staff and other Administration officials are involved, as described above, in reviewing the significant legal and policy issues that a given case may raise, the final decision that is made will necessarily end up having an effect on the parties who happen to be involved in the case that raises those issues. But it is never proper for a President or any member of his staff to attempt to influence decisions in a pending case because of the identity or politics of the parties involved, or because of any partisan political implications of the decision. The interference in the ITT case, as described in your question, would be an example of such impropriety.

The third and related point I would emphasize involves the importance of public confidence in the integrity of Government and, in particular, the administration of justice. Specifically, it is important not simply to avoid any attempts at improper interference to assist or harm a party involved in a pending case; it is also important to avoid even the appearance that such attempted interference has taken place. For this reason, at the beginning of the Administration the White House and the Department of Justice adopted the rule that communications with or inquiries to the Department about pending matters must go through the Office of the Counsel to the President.

If general policy issues are involved that merit consideration by officials with policy responsibilities in the relevant areas, such persons may of course end up participating in the overall decision-making process. But outside of the Office of the Counsel to the President, no one on the White House staff is to call the Justice Department to inquire about the status of an immigration proceeding, or to express a view about a given criminal prosecution, or otherwise to initiate contact about a particular pending case. Even when purely information inquiries are involved -- as, for example, when a Member of Congress has written to the President about a particular matter -- such inquiries must be handled through the Counsel's Office.

I believe this policy has been very important in helping to avoid the kinds of problems your question is addressing, and I definitely intend, if confirmed, to continue to adhere to it as Attorney General.

3(a) Yes, I pledge not to engage in 1984 election activities.

3(b) Yes, I agree not to be involved in party, candidate or other partisan political strategies while serving as Attorney General.

3(c) In order to maintain the independent, even-handed law enforcement responsibilities of the Attorney General, great care must be taken to ensure both the appearance and the fact of a proper relationship between the President and the Attorney General. When a matter in litigation involves a substantial policy issue, it is appropriate for the President to express to the Attorney General his views on such a policy issue. How that policy is applied to a specific case, as well as decisions concerning the conduct and disposition of the case, are within the exclusive province of the Attorney General. Obviously, decisions on criminal prosecutions and other litigation matters unrelated to policy issues should be handled solely by the Attorney General and the Department of Justice.

3(d) In order to maintain public confidence in the effective and impartial administration of the laws, guidelines have been promulgated which govern communications between the White House and the Department of Justice. Specifically, these guidelines require that any communications concerning pending investigations or litigation be transmitted only through the Office of Counsel to the President within the White House and through the Office of the Attorney General or Deputy Attorney General within the Department of Justice. A copy of the White House guidelines is attached.

3(e) I will follow the principles and procedures on outside contacts as set forth in Attorney General William French Smith's memorandum of 10 February 1981, a copy of which is attached.

attachment to #3(d)

THE WHITE HOUSE
WASHINGTON

February 10, 1981

MEMORANDUM FOR THE WHITE HOUSE STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Communications with the Department of Justice

As we are all keenly aware, it is imperative that there be public confidence in the effective and impartial administration of the laws. To that end, after consultation between the President and the Attorney General, the following procedures have been established in regard to communications between the White House Staff and the Department of Justice.

1. All inquiries which concern or may concern particular pending investigations or cases being handled by the Department of Justice shall be directed to the Counsel to the President. If appropriate and necessary, the inquiry will then be transmitted to the Office of the Attorney General or the Deputy Attorney General.

2. All requests for formal legal opinions from the Department of Justice shall be directed to the Counsel to the President, who will direct such requests to the Office of the Attorney General or to the Assistant Attorney General -- Office of Legal Counsel.

3. All comments between the White House Office and the Department of Justice in regard to policy, legislation and budgeting should be handled directly between those parties concerned.

Your cooperation in observing these guidelines is most strongly urged. If you have any questions regarding these procedures, please contact this Office.

attachment to #3(e)

Office of the Attorney General
Washington, D.C. 20530

February 10, 1981

MEMORANDUM

TO : Heads of Offices, Boards, Bureaus and Divisions

FROM : WFS William French Smith
Attorney General

SUBJECT : Outside Contacts

In carrying out our responsibilities in the Department, we must recognize that the effective and impartial administration of the laws depends on the exercise of good judgment. I have served as Attorney General for only a very short period of time but already I have observed that those in the Department of Justice are steadfastly professional in the administration of the law.

This high sense of public duty and ethics on the part of the Department's employees must be made manifest. To that end, I am reaffirming the following principles and procedures which are currently in effect:

CASES

(1) All inquiries and information concerning pending investigations or cases from either the White House Staff or the Congress should be directed to the Offices of the Attorney General or the Deputy Attorney General. Additionally, each Assistant Attorney General should report to the Deputy Attorney General all communications about specific cases by persons other than those involved in the litigation.

(2) All requests for formal legal advice or legal opinions from the White House Staff or the Congress should be directed to the Office of the Attorney General or to the Office of Legal Counsel. The Assistant Attorney General for the Office of Legal Counsel should report directly to the Attorney General any communications, from whatever source, that, in his view, constitute improper attempts to influence his office's legal judgment.

(3) Routine written inquiries regarding the status of cases or matters may be processed by correspondence units in the regular manner.

(4) These procedures are not intended to interfere with the normal communications between the Department of Justice and its client departments and agencies and any meetings or communications necessary to the proper conduct of the litigation.

* * *

To facilitate these procedures, I have conferred with the President who will be issuing a directive to all White House employees advising them of these procedures. That directive will also centralize within the Office of the Counsel to the President all responsibility for transmitting to the Attorney General or Deputy Attorney General any communications about specific investigations or cases.

POLICY AND LEGISLATION

White House or Congressional inquiries concerning policy decisions or legislation are inherently different from those directed at specific investigations and cases. The positions of the Administration on those kinds of matters often must be coordinated. Consequently, these types of communications will be treated differently:

Each head of an office, board, bureau or divison, or the designated person or office within an office, board, bureau or division, may communicate directly with the White House Staff or with Congress on legislative proposals, general policy decisions and the like, as is the current practice. However, to ensure coordination in the Department, the Office of Legislative Affairs should be kept apprised of all communications about legislation and the Offices of the Attorney General and Deputy Attorney General should be informed about important or significant policy communications.

BUDGETING AND FUNDING PROGRAMS

The Justice Department's budgeting and funding programs are a third area in which outside communication frequently occurs. In this area, it is a proper and an essential part of the solicitation, bid and deliberative process for third parties to communicate directly with the Office of Justice Assistance, Research and Statistics or any other agency within the Department that is involved in funding and for the Justice Management Division to communicate directly with the Office of Management and Budget:

> While OJARS and JMD must retain their discretion and flexibility, it is essential that those offices coordinate their activities with other federal agencies. Consequently, in the case of budgeting and funding matters, the head of the appropriate office should report to the Offices of the Attorney General or the Deputy Attorney General any attempts to influence improperly the office's decision-making process as well as any important or significant policy communications.

* * *

Any questions about the scope or interpretation of these procedures should be addressed to the Office of the Attorney General.

I. Background -- Ever since the Supreme Court handed down its decision in the Bivens case the Department of Justice and several of us on the Committee have been grappling with the question of how to deal with the difficult question of the scope of the federal government's liability for the acts of its law enforcement officials. In that case the court in essence decided that even though Congress never had created a specific remedy in statute that the victim of an unconstitutional action by a federal law enforcement official had a cause of action against the official or agent in their personal capacity.

The Supreme Court decision does not affect the liability of the government per se which is immune from suit through the doctrine of sovereign immunity. Of course Congress can waive the doctrine as it has for certain torts (e.g. postman running into a pedestrian) in the Federal Torts Claims Act. Congress has never amended the act to cover all the so-called constitutional torts covered by the Bivens case.

So the present state of the law creates the following rather anomolous situation. The victim of an illegal or unconstitutional search can sue the agent for a violation of his Fourth Amendment rights but cannot sue the government itself pursuant to whose authority the search was conducted. The victim usually doesn't want to sue the agent because, first the agent doesn't have the resources to pay the damages and furthermore there is a certain injustice in suing the agent who was probably acting pursuant to orders from higher authority in the government.

The solution satisfies no one. The victims don't have a defendant with resources to sue. The agents are traumatized by the prospect of civil liability for any action they take and since the government won't take responsibility for the agents, the agents have to carry huge liability insurance policies. The government, at least the law enforcement agencies, face severe morale problems among their employees so they have difficulty performing their functions.

A number of us here on the committee and representatives of the Department of Justice have been working for the past year in attempting to develop a scheme which would more equitably share the burden for this problem among the affected parties. One thing everybody working on this problem seems to agree on is that it is unfair, especially in the law enforcement situation, for the agents themselves to have any liability, except perhaps in the most extreme situation. Therefore, all of the major proposals would create immunity for the agents themselves and shift all the liability upon the federal government through amendments to the Federal Torts Claims Act. The disagreement occurs over the question of the scope of the federal government's liability for the acts of its agents when they violate the constitution. Sen. Grassley and I proposed a scheme for such laibility for law enforcement violations of the constitution which the committee endorsed last summer.

In essence the committee proposal totally immunized federal law enforcement officials from suit. But it also provided

(a)that the government is liable for the costs of bodily injury and property damages or liquidated damages of up to $2,000 whichever is greater

(b)but if the employee was not acting in good faith and the tort is a continuing tort such as wiretapping, the damages could be as much as $200 per day up to $75,000 or in malicious situations damages as high as $100,000.

Now we understand the Department is unhappy with the committee proposal. The disagreement seems to be over two things:

o First the Department of Justice while initially agreeing with that scheme decided that they did not like the liquidated damages provisions even for law enforcement and an attorneys fee provision that Sen. Grassley and I had agreed upon;

o Second and even more important while they could agree upon such a scheme applying to torts committed in the law enforcement area and even the intelligence area they had doubts that there should be governmental liability for the non-law enforcement agencies (e.g.OSHA or Agriculture Department inspectors)

Meanwhile key members of the House of Representatives apparently have taken a much more liberal approach to this problem. While they are also willing to totally immunize the law enforcement agents apparently they will not process any legislation that doesn't make the government totally liable to victims no matter whether the agent acts in good or bad faith.

Finally the Chief Justice in his concurring opinion in the Bivens case points out the necessary relationship between the torts claims problem and constitutional torts and the exclusionary rule. The purpose of the exclusionary rule is to provide some remedy by the citizen against the government for violations of the constitution by excluding illegally seized evidence. Of course the problem is that the exclusionary rule satisfies no one but the criminal and doesn't help the innocent victims of a law enforcement abuse. As the Chief points out if congress would create a tort claims scheme as an alternative to the exclusionary rule than it might be possible to modify the rule itself.

II. Questions.

1. Don't you think its unfortunate that agents and employees continue to be liable for their acts just because we can't agree about the scope of liability of the federal government?

2. Since we are apparently very close to agreement on the question of law enforcement agency liability , perhaps we should deal with that problem first and leave the question of the federal government's liability to small businesses for abusive OSHA or EEOC inspectors for later. Do you agree?

3. Indeed why should there be any limitation upon the government's liability to a small business for the acts of the federal government through its agents?

4. I would be willing to place limitations upon damages in that situation similar to law enforcement and indeed perhaps even say that where an OSHA or EEOC inspector acts in violation of the Constitution but in reasonable though mistaken belief that he was acting within the constitution that the government would only be liable it the violation was one that arose under the fourth amendment. I think that that scheme recognizes that the typical violation of a small businessperson's constitutional right would be some unconstitutional invasion of his privacy (illegal seizure of his records). Do you think that that is a way out of this impasse?

5. Don't you agree that we owe it to law enforcement agents and their families to resolve this question immediately? And don't we owe it to small businesspeople to do so in a manner that doesn't jeopardize their ability to get satisfaction from the federal government for abusive bureaucrats?

6. Finally don't you agree that any repeal or modification of the exclusionary rule would fare better in the Supreme Court if some type of tort claims scheme like we have been talking about was in place when the Supreme Court reviews that legislation?

RESPONSE OF EDWIN MEESE
TO
SENATOR JOSEPH R. BIDEN, JR.

1. Of course it is unfortunate. However, since the purpose of the Department's proposal is to substitute the liability of the Federal Government for that of its employees, the question of the scope of the Federal Government's liability is an important one, as is the ability of the individual employee to vindicate the challenged conduct in the course of the trial.

2. I understand that the Department's position is that the question of government liability should be considered as a unitary issue, especially since there continues to be disagreement over what is a law enforcement issue and what is a non-law enforcement issue. In other words, the problem and the issues are government-wide and must be dealt with in order to create a structure that is workable and consistent as a whole.

3. The identity of the plaintiff is not an unimportant matter, but the question that remains continues to be the most important one, and that is what is to be the liability of the substituted defendant, the Federal Government. Certainly there should be no specifically imposed limitation where government conduct has been proven by the plaintiff to have been unreasonable.

4. The Department of Justice is willing to consider any reasonable proposal. Obviously, much will depend on how we define the violation. We also must remember that one of the purposes of the Department's bill is to eliminate or reduce the volume of litigation -- litigation that is expensive for both the plaintiff, the defendant, and the Government. This concern for reducing litigation places a further premium on the need for precise definition of causes of action and limitations on damages.

5. I could not agree with you more, and I think that the proposals which the Department has been submitting over the years demonstrate that the Department of Justice agrees with you.

6. Without attempting to predict what concepts and factors the Supreme Court will consider pivotal, the existence of a system of meaningful tort remedies is certainly in the public interest for the very reasons articulated in the Congress by you and others.

Attachment L

QUESTIONS REGARDING INTELLIGENCE AND CIVIL LIBERTIES

(1) In 1981 the Reagan Administration considered changes in the Executive Order on Intelligence Activities that would have, among other things, given the CIA authority for "undisclosed participation" in domestic organizations for the purpose of "influencing the activity of the organization or its members." The Senate Intelligence Committee unanimously objected to this change, and it was not made. However, other changes adopted in President Reagan's order (E.O. 12333) did lift previous restrictions on CIA clandestine collection and covert action operations within the United States.

For instance, the Reagan order allows the CIA to use clandestine collection techniques against a U.S. citizen in the United States to collect "significant foreign intelligence" -- even if the target is a law-abiding citizen having no involvement with suspected foreign agents or terrorists.

-- What role did you have in the initiation and consideration of these changes in the regulations governing the activities of U.S. intelligence agencies in regard to innocent U.S. persons?

-- Do you favor the CIA collecting information about law-abiding citizens in the United States without their consent?

-- What were your views on the proposal for giving CIA authority for "undisclosed participation" in domestic organizations for the purpose of influencing their activities?

-- One of the problems with the Executive Order on Intelligence Activities is that, although it allows the use of intrusive collection techniques against innocent U.S. persons for the purpose of collecting significant foreign intelligence, it nowhere defines that term.

Because of this inherent ambiguity of the term, I don't expect you or anyone else to come up with an exact definition of what intelligence is significant. I'd like, however, to get at least a rough sense of what information you feel is significant and therefore worth using intrusive techniques against U.S. persons. What sort of foreign intelligence do you feel is so important?

(2) During the Administration's consideration of the new Executive Order on Intelligence Activities in 1981, Mr. Meese reportedly made several public statements that appear contradictory -- urging that restrictions on CIA be lifted and then claiming no intent to give CIA more power to operate in the U.S.

-- How does he reconcile these conflicting statements?

(3) The Executive Order on Intelligence Activities makes the Attorney General responsible for approving the procedures which CIA, FBI, NSA, and other intelligence agencies propose for regulating the collection, storage, and dissemination of information abut "United States persons" (citizens, resident aliens, domestic organizations).

The Attorney General is also given the power to approve the use of intrusive techniques, such as physical searches or break-ins, in the United States and against Americans abroad without a judicial warrant. This power is justified by the Administration under claims of "inherent Presidential power."

Taken together, these powers give the Attorney General enormous authority to determine the balance between national security and personal privacy. Except for the Foreign Intelligence Surveillance Act of 1978, there are no statutory guidelines for these intelligence activities such as physical searches and surveillance.

-- How will Mr. Meese use the Attorney General's authority under the Executive Order to protect privacy and individual rights?

(4) The Senate Intelligence Committee has attempted to

maintain close oversight over the policies and decisions of the Attorney General that affect the intelligence activities of the CIA, FBI, NSA, and other agencies. The Committee relies on the Attorney General and the agencies to keep it "fully and currently informed" of these activities and to consult the Committee on significant changes, such as revisions in guidelines or procedures.

-- Will Mr. Meese agree to keep the Senate Intelligence Committee informed of his policies and decisions on intelligence matters, and to consult the Committee on significant actions?

(5) In 1982 President Reagan made several statements indicating his belief that there was significant Soviet involvement in the nuclear freeze movement and similar groups in the United States favoring disarmament and arms control. Thereafter, the House Intelligence Committee released two declassified FBI reports which made clear that Soviet efforts to influence domestic groups through the Communist Party and other Soviet agents were not as significant as the President had indicated. After these reports came out, the Administration stopped making these charges.

-- Did Mr. Meese have any role in the Administration's efforts to discredit the nuclear freeze movement as Communist-inspired?

-- Does Mr. Meese believe that FBI counterintelligence should be insulated against partisan political use by the White House to discredit Administration critics? How can it be so insulated?

-- Will Mr. Meese continue the policy of his predecessors that makes the Attorney General a buffer to prevent partisan political use of the FBI by the Administration?

(6) In 1983 Attorney General Smith issued new guidelines for FBI domestic security investigations. Mr. Meese was reported as praising the new guidelines for strengthening FBI capabilities for dealing with terrorism. In response to Congressional questions about the impact of the new guidelines

on civil liberties, the Justice Department and the FBI issued instructions and interpretations designed to clarify provisions that might pose a threat of FBI investigations of political dissent and the exercise of First Amendment rights.

-- Will Mr. Meese maintain the Smith Guidelines - and the interpretations and instructions adopted to allay Congressional concerns about the threat to First Amendment rights?

(7) FBI Director Webster has indicated in recent press interviews that he is considering resignation, even though he has 4 more years in his 10 year term. The new Attorney General will be the key Administration official advising the President on the FBI Director's position.

-- Does Mr. Meese believe the President should accept Judge Webster's resignation, if he submits it before his term expires?

-- What qualifications would Mr. Meese look for in finding a successor to Judge Webster?

-- In 1977 Attorney General Griffin Bell set up a non-partisan advisory panel to help him consider possible nominees for FBI Director. What steps would Mr. Meese take to put selection of an FBI Director on a non-political basis?

(8) The 10-year term law for the FBI Director was passed not only to limit the Director's term, but also to express the intent of Congress that the FBI Director should not be removed or appointed on a political basis. Judge Webster and his predecessor, Clarence Kelley, were non-political choices. Both of them demonstrated their concern for constitutional rights by supporting the Attorney General's guidelines to establish safeguards for privacy and free speech that go beyond statutory requirements.

-- If Judge Webster retired, would Mr. Meese look for a successor who will maintain this commitment to individual rights?

(9) We have seen in the ABSCAM case and other FBI undercover operations that the Bureau has, in recent years, greatly expanded its use of undercover techniques and that those operations give the FBI tremendous power to affect the privacy and reputation of innocent citizens. The Select Committee that investigated ABSCAM in 1982 recommended legislative standards for law enforcement undercover operations, and a bill was introduced in 1983 to implement those recommendations.

-- Does Mr. Meese support the current guidelines that require reasonable indication of a crime as the basis for FBI undercover operations?

-- Will he work with interested Senators on possible legislative standards for such operations?

ANSWERS OF EDWIN MEESE TO QUESTIONS OF SENATOR BIDEN REGARDING INTELLIGENCE AND CIVIL LIBERTIES

1(a). The initiation and development of this Executive Order was the product of an interagency working group. After drafts had been completed, I participated in meetings, and in at least one case conducted a meeting, to review and refine the provisions of this Executive Order.

1(b). In general, I do not favor the CIA collecting information about law-abiding citizens in the United States without their consent. There are some instances in which it is necessary for the CIA to collect information about Americans prior to making any direct contact with them, such as making checks on a potential contractor prior to approaching him with a contract proposal. The Executive Order permits this but with several important limitations. The collection technique used must be the least intrusive feasible. Further, collection must be done in accordance with applicable law and with procedures established by the DCI and approved by the Attorney General.

It is important to recognize that this limited form of collection differs from the collection of "significant foreign intelligence" referenced earlier in the question. By the terms of the Executive Order no foreign intelligence collection by intelligence agencies in the United States "may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons." Thus, this foreign intelligence collection may be from United States persons but generally is not about them.

1(c). Under Executive Order 12333 intelligence agencies are not authorized to participate in organizations within the United States, without disclosing their affiliation, for the purpose of influencing the activities of the organization unless the organization is primarily composed of non-U.S. persons and is reasonably believed to be acting on behalf of a foreign power. These are stringent limitations. In my judgment they fully protect domestic organizations from any undue influence by intelligence agencies.

1(d). When characterizing intelligence collection as "intrusive" it is important to remember that most intrusive techniques, such as electronic surveillance, physical search and surveillance are separately limited by statute, Executive Order, regulation and procedures. Further, Executive Order 12333 has a generic requirement that the least intrusive collection feasible be used in the United States or directed at U.S. persons abroad. As I noted earlier, the provision in Executive Order 12333 concerning the collection of significant foreign intelligence in the United States stipulates that such collection may not be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons. Thus, I cannot agree that the Order allows use of intrusive techniques against innocent U.S. persons.

Any attempt on my part to characterize significant foreign intelligence, even by use of hypotheticals, might jeopardize on-going collection programs. It would be inappropriate to cite examples in a public forum such as this.

2. Executive Order 12333, based on experience gained under its predecessor orders, expanded slightly the authority of the CIA to operate in the United States but did so in the context of procedures approved by the Attorney General and requiring close coordination with the FBI. These procedures are available to the Congress, through its Intelligence Committees, and contain adequate safeguards that the CIA will neither exceed its statutory authority nor interfere with the FBI in the exercise of its responsibilities.

3. While there is no statute governing physical searches for intelligence purposes, the reasonableness requirement of the Fourth Amendment does govern such searches upon a determination that there is probable cause to believe the target is a foreign power or an agent of a foreign power. I recognize that this is an exceptional technique which must be carefully employed only when absolutely necessary. I would apply the most rigorous scrutiny and careful standards, with scrupulous attention to Fourth Amendment and privacy concerns, to any request for my approval of such activities.

4. It is my understanding that the cooperation between the Department of Justice and the Intelligence Committees has been excellent and that regular briefings have been provided both the Committees and their staffs. I would expect this to continue if I am confirmed.

5(a) The Administration's purpose was not to "discredit the nuclear freeze movement as Communist-inspired," but to accurately describe the fact that there was Soviet involvement in certain instances around the world. I participated in discussions on this subject, but did not have a direct role in the Administration's efforts in this regard.

5(b) Yes, I believe that FBI counterintelligence should be insulated against partisan political use or to discredit Administration critics. This can be done by careful guidelines for FBI activities (such as those currently in effect) and by constant vigilance by the Attorney General and other leaders in the Department of Justice and the FBI.

5(c) Yes, I will continue the policy that makes the Attorney General a buffer to prevent partisan political use of the FBI.

6. Yes, I do plan, if confirmed, to maintain the Smith guidelines and their associated interpretations and instructions. There may be the need, in the future, to modify or revise certain guidelines, in the light of changing requirements, conditions, or experience. As has been past practice, such changes would be discussed with the appropriate committees of Congress.

7(a) If confirmed, I would do everything possible to encourage FBI Director Webster to fulfill his entire 10-year term and would advise the President to resist any proffered resignation. However, the final decision on accepting such a resignation, if it should be submitted, would be the President's and would necessarily depend upon the reasons for the resignation.

7(b) I would look for the same qualities displayed by Judge Webster, particularly integrity, intellect, appropriate experience, and strength of character.

7(c) I believe that a nonpartisan advisory panel to help consider possible nominees for FBI Director would assist in demonstrating that the selection is on a non-political basis and I would favor using such a system.

8. If Judge Webster should retire, I would definitely look for a successor who would maintain a commitment to individual rights.

9(a) Yes, I support the current guidelines that require reasonable indication of criminal activities as the basis for FBI undercover operations.

9(b) Yes, I will work with interested Senators on any proposed legislation in this field.

Attachment M

DRUG COORDINATOR

MR. MEESE, I'M SURE YOU ARE AWARE OF THE RECENT PASSAGE BY THE SENATE OF A BILL THAT IS VERY IMPORTANT TO ME. THE SO-CALLED "DRUG CZAR" BILL IS NOW PENDING ACTION IN THE HOUSE.

a.) HAVE YOU HAD A CHANCE TO REVIEW THAT BILL?

THEN IT SHOULD COME TO YOU AS NO SURPRISE THAT, AS ATTORNEY GENERAL, YOU WILL BE THE DRUG COORDINATOR UNDER MY BILL.

THE PRESS HAS REFERRED TO THIS BILL AS A WATERED-DOWN VERSION COMPARED TO THE BILL VETOED BY PRESIDENT REAGAN LAST CONGRESS.

THAT IS NOT MY PERCEPTION AT ALL. THE BILL CALLS FOR A BOARD OF ALL INTERESTED CABINET OFFICERS WHO WILL INITIALLY SIGN-OFF ON A CENTRALIZED DRUG STRATEGY AND BUDGET. HOWEVER, ONCE THE STRATEGY IS AGREED TO, IT WILL BE YOUR RESPONSIBILITY FOR CARRYING IT OUT. YOU WILL BE THE "PRIMARY ADVISOR TO THE PRESIDENT AND CONGRESS ON NATIONAL AND INTERNATIONAL DRUG LAW ENFORCEMENT PROGRAMS AND POLICIES" AND THE PERSON WE WILL LOOK TO ON ALL ASPECTS OF THIS PROBLEM.

THEREFORE, IT IS ONLY FAIR THAT YOU HAVE SUFFICIENT AUTHORITY TO SEE THAT THE STRATEGY IS CARRIED-OUT. AS YOU MAY HAVE ALREADY HEARD FROM SOME OF THE CABINET SECRETARIES, THAT AUTHORITY RESTS IN SEC. 4(C) 2 AND 3, WHICH READS:

> "...PROVIDE GUIDANCE IN THE IMPLEMENTATION AND MAINTENANCE OF POLICY, STRATEGY AND RESOURCES DEVELOPED UNDER SUBSECTION (A)..."

AND ALSO

> "...REVIEW AND APPROVE THE REPROGRAMMING OF FUNDS RELATING TO BUDGETING PRIORITIES DEVELOPED UNDER SUBSECTION (A)..."

THAT MEANS THAT ONCE THE BOARD HAS VOTED APPROVAL OF THE CENTRAL STRATEGY AND BUDGET, YOU HAVE AUTHORITY TO SEE THAT IT IS CARRIED-OUT.

THESE TWO PROVISIONS ARE THE ESSENCE OF THE BILL AND THAT WHICH WILL GIVE YOU THE AUTHORITY TO CARRY OUT OUR FEDERAL DRUG POLICY.

WITH THAT AS BACKGROUND, LET ME ASK YOU SOME QUESTIONS THAT COVER THE FOUR MAJOR ASPECTS OF THE DRUG ENFORCEMENT ISSUE, WHICH ARE: 1.) THE FOREIGN ASPECT OF ERADICATION, CROP SUBSTITUTION AND TREATIES WITH FOREIGN NATIONS 2.) INTERDICTION OF DRUGS BEFORE THEY REACH THE UNITED STATES BOARDERS 3.) INVESTIGATION AND ENFORCEMENT OF THOSE INDIVIDUALS INVOKED IN DRUG TRAFFICKING AND 4.) COLLECTION OF INTELLIGENCE WHICH IS USEFUL IN INTERRUPTING THE FLOW OF DRUGS AT EACH OF THESE STAGES.

FOREIGN POLICY AND FOREIGN INTELLIGENCE QUESTIONS

Mr. Meese, in my judgment, if the National Narcotics Act of 1984 becomes law and the Attorney General becomes chairman of the National Drug Enforcement Policy Board, one of the Attorney General's most important duties, and one against which his adequacy as an Attorney General must be judged, will be his leadership of this board.

Consequently, although questions about the foreign policy or foreign intelligence sides of U.S. drug control operations might traditionally have been inappropriate for a potential Attorney General, they are now appropriate because of these possible additional responsibilities.

Questions

1. The membership of the proposed Drug Enforcement Policy Board would include the Attorney General, the Director of Central Intelligence, and the Secretaries of Defense, State, and Transportation.

-- Do you feel that the coordination of U.S. drug control objectives is important enough so that, in general, at meetings of this Board the members themselves should attend and not simply their lower ranking representatives?

-- Would you undertake a commitment to ensure that, in general, the cabinet level members of the Board themselves attend meetings?

2. -- One of the most plagueing concerns that I and many other members of Congress have about U.S. diplomatic efforts to control drugs is that they consistently take a back seat to other foreign policy concerns. If the U.S. has a military or a political or a commercial interst in a foreign country in addition to a drug control interest, we have traditionally been timid in demanding that that country take aggressive drug control steps for fear of jeopardizing our other interests.

3. Last year, the Congress passed legislation that requires termination of all U.S. foreign and military aid to drug source countries if they do not act more aggressively against drug trafficking.

-- Would you, as Chairman of the Drug Policy Board and therefore primary advisor to the President on drug issues, be willing to advise him to terminate all U.S. aid to a drug source if appropriate? Colombia, for example, supplies over 80% of all U.S. marihuana and 75% of U.S. cocaine.

-- Should the U.S. terminate the approximately $20 million a year in total U.S. aid and vote against IMF and World Bank assistance if Colombia does not take meaningful action against drug traffickers?

4. -- What do you see as some of the major weaknesses in U.S. efforts to control the foreign sources of illicit drugs?

5. -- What initiatives would you, as Chairman of the National Drug Enforcement Policy Board, propose that the State Department undertake in order to correct these weaknesses? What initiatives could the Treasury Department take?

6. -- Discussing, in general terms, some of the specific countries that are most important in the supply of illicit drugs to the United States - such as Colombia, Bolivia, Peru, Pakistan, Thailand, and Italy - could you explain whether you feel that the governments of those countries are making a good faith effort to cooperate with us in this area of vital importance to the United States?

7. -- In Mexico, eradication of poppy and marihuana crops by aerial spraying of herbicides has been effective. Do you feel that the U.S. government should urge this technique on the governments of Colombia, Peru, and Bolivia in order to cut coca and marihuana production? Should the Burmese and Thai governments spray poppy fields that support the Southeast Asia heroin trade which now fills up to 20% of the U.S. market? What steps should the U.S. take to urge these governments to undertake aerial eradication?

8. -- What sort of priority do you feel that U.S. drug control objectives should take in U.S. actions in multi-national financial organizations such as the IMF and the World Bank?

9. -- Because we are in open session, you will not be able to go into detail. But could you discuss, in general terms, whether you feel that the intelligence agencies, such as the CIA, are making an adequate contribution to U.S. drug control enforcement efforts?

10. -- By law [The National Security Act of 1947] the CIA is prohibited from engaging in law enforcement activities. In general, what sorts of support should the CIA and other intelligence agencies provide to U.S. drug control programs consistent with this statutory restriction?

11. -- The State Department's Bureau of International Narcotics Matters has a 1984 budget of $53 million to support its drug control, enforcement, and eradication programs overseas. Do you feel that this is an appropriate amount [as opposed to half or double that amount]? Why?

12. -- The United States is not the only country with a major drug abuse problem. West Germany and Italy are only two examples of our allies who have serious domestic, illicit drug usage problems. Do you feel that the United States is making an adequate effort to urge other countries to add drug control to their foreign policy agendas? What steps could the United States take to urge some of our allies to assist us in this important area?

13. -- The Department of Defense has some significant reconnaissance assets - such as AWACS aircraft - that can support Coast Guard and Customs Service drug interdiction efforts. What role should the Defense Department play in drug interdiction?

DOMESTIC ENFORCEMENT

MR. MEESE, WE HAVE SEEN AN INCREASE OF ALMOST 43% IN THE JUSTICE BUDGET, AND AN INCREASE OF 900 NEW FBI AND DEA AGENTS IN THE LAST 4 YEARS. BASED ON YOUR EARLIER TESTIMONY, YOU INDICATE THAT YOU HAD SOMETHING TO DO WITH THESE INCREASES.

MOST OF THIS INCREASE IN THE DRUG AND CRIME ENFORCEMENT AREA, IS A RESULT OF THE TASK FORCES SET-UP IN 1982. WE CURRENTLY HAVE TWO TASK FORCE PROGRAMS IN OPERATION. ONE UNDER THE DIRECTION OF THE ATTORNEY GENERAL AND ONE THAT YOU ANNOUNCED LAST YEAR, WHICH IS HEADED BY THE VICE PRESIDENT.

TO DATE, WE HAVE SEEN AND HEARD ABOUT SEVERAL SUCCESSFUL CASES PRODUCED BY THESE TASK FORCES THAT THE ADMINISTRATION CLAIMS JUSTIFY THE SUCCESS OF THE ENTIRE PROGRAM.

IN YOUR PRESS BRIEFING ON MARCH 23, 1983, CONCERNING THE INTERDICTION TASK FORCES TO BE HEADED BY THE VICE PRESIDENT YOU STATED THE FOLLOWING:

> "...THIS IS PART OF TOTAL, NATIONAL PROGRAM THAT HAS BEEN USED SUCCESSFULLY AND WE HOPE WILL CONTINUE TO BE EVEN MORE SUCCESSFUL IN THE PRIMARY, FEDERAL REPONSIBILITY IN THE FIELD OF LAW ENFORCEMENT,.WHICH IS PREVENTING AND CONTROLLING DRUG ABUSE..."

QUESTION 14. FIRST OFF, WHY DID YOU HANDLE THIS ANNOUNCEMENT AND BRIEFING IF IT IS SUPPOSED TO BE DIRECTED BY THE VICE PRESIDENT?

15. IN THE BRIEFING YOU ANNOUNCED THAT THERE WERE NO NEW RESOURCES BEING ALLOCATED FOR THE INTERDICTION TASK FORCE WHICH IS SUPPOSED TO COVER 96,000 MILES OF UNITED STATES BOARDER. DO YOU STILL BELIEVE THAT PROGRAM CAN BE SUCCESSFUL WITH OUT ADDITIONAL RESOURCES?

16. I HAVE HEARD THAT SOME OF THOSE DIRECTLY INVOLVED IN THE PROGRAM HAVE HAD DIFFICULTY IN GAINING THE FULL COOPERATION OF THE MILITARY. WITHOUT THEIR SUPPORT, PARTICULARLY IN THE AREA OF EQUIPMENT AND MAINTENANCE OF EQUIPMENT,- HOW IS THIS PROGRAM GOING TO BE SUCCESSFUL?

AT THE BRIEFING, YOU INDICATED THERE WERE NO GOALS SET FOR THE PROGRAM AT THAT TIME. 17. ARE THERE ANY GOALS NOW?

18. HOW WILL THE RECENT CUTS PROPOSED IN THE CUSTOMS AIR INTERDICTION PROGRAM AFFECT THE SUCCESS OF THIS PROGRAM?

FOLLOW-UP 19. -(ARE WE MAKING PROGRESS IN DRUG FIGHT?)

THIS IS A REAL CONCERN OF MINE. I GET VERY CONCERNED WHEN MAJOR NEW PROGRAMS ARE ANNOUNCED WITHOUT ANY CLEAR

INFORMATION AS TO HOW THEY WILL OPERATE OR HOW WE WILL KNOW WHETHER THEY ARE SUCCESSFUL OR NOT. YOU AND OTHERS HAVE CLAIMED THE BASIS FOR MOVING AHEAD WITH BOTH OF THESE NEW TASK FORCE PROGRAMS, WAS THE SUCCESS OF THE SOUTH FLORIDA TASK FORCE PROGRAM IN 1981.

QUESTION 20. HAS THERE BEEN OR WAS THERE PREVIOUSLY ANY FORMAL EVALUATION CONDUCTED OF THE SOUTH FLORIDA PROGRAM?

FOLLOW-UP: -AS YOU MAY BE AWARE, IN THE CONFERENCE REPORT PREPARED FOR THE APPROPRIATION OF FUNDS FOR THE ORGANIZED CRIME AND DRUG TASK FORCE, I HAD THE FOLLOWING INSERTED:

> "...THE COMMITTEE BELIEVES AN ANNUAL REPORT SHOULD BE DELIVERED TO THE PRESIDENT, APPROPRIATIONS COMMITTEES AND JUDICIARY COMMITTEES STARTING NO LATER THAN MARTCH 31, 1984 WHICH INDICATES BY COMPARISON TO SIMILAR STATISTICS, INFORMATION AS OTHER APPROPRIATE MEASURES FROM PREVIOUS YEARS, WHETHER THIS PROGRAM HAS MADE CONTRIBUTIONS..."

I THEN PROCEEDED TO LIST OUT A NUMBER OF CRITERIA FOR MEASURING THE SUCCESS OF THIS PROGRAM.

QUESTION 21. ARE YOU FAMILIAR WITH THAT REPORT REQUIREMENT? CAN WE EXPECT, UNDER YOUR LEADERSHIP, TO RECEIVE SUCH REPORTS ON TIME FROM THE JUSTICE DEPARTMENT?

FOLLOW-UP 22. WE CAN TALK ALL WE WANT ABOUT ONE CASE HERE, OR ONE CASE THERE, BUT THE BOTTOM LINE IS WHAT VOLUME OF DRUGS ARE ON THE STREET, WHAT IS THE PRICE AND PURITY OF DRUGS BEING CONSUMED, HOW MANY PEOPLE ARE INVOLVED AND HAVE WE REALLY PUT ANY TRAFFICKING ORGANIZATIONS OUT OF BUSINESS. IF THOSE NUMBERS DON'T CHANGE THEN WE AREN'T SHOWING POSITIVE SIGNS OF SUCCESS.

OBJECTIVE MEASUREMENTS OF SUCCESS OR FAILURE IS VERY IMPORTANT. WE MUST BE WILLING TO ADMIT WHEN WE MAKE A MISTAKE AND MOVE FORWARD WITH ADJUSTMENTS IN POLICY TO CORRECT THE PROBLEM. OTHERWISE, WE ONLY WEAKEN THE CONFIDENCE THAT THE AMERICAN PEOPLE HAVE IN LAW ENFORCEMENT IF WE CONTINUE TO TELL THEM WE ARE WINNING A WAR AGAINST CRIME AND DRUGS, WHEN IN REALITY, WE ARE NO FURTHER ALONG THEN WE WERE BEFORE.

COORDINATION AND CUSTOMS BUDGET FOR DRUG INTERDICTION

MR. MEESE, I WOULD LIKE TO FOLLOW UP ON SOME QUESTIONS SENATORS DECONCINI AND HEFLIN ASKED YOU YESTERDAY. YESTERDAY YOU TOLD THIS COMMITTEE THAT YOU FELT, SINCE THE REAGAN ADMINISTRATION HAS COME INTO OFFICE, COORDINATION OF DRUG ENFORCEMENT HAS BEEN SUBSTANTIALLY IMPROVED. YOU TOLD US HOW THE LEGAL POLICY COMMITTEE WAS TACKLING THE PROBLEM OF COORDINATION BETWEEN THE DEFENSE DEPARTMENT, TREASURY, JUSTICE, STATE, TRANSPORTATION, THE INTELLIGENCE COMMUNITY, ETC..

QUESTIONS 23. ARE YOU A MEMBER OF THE CABINET COUNSEL ON LEGAL POLICY THAT IS CURRENTLY COORDINATING THE FEDERAL DRUG EFFORT?

24. ARE YOU FAMILIAR WITH THE CURRENT ARGUMENT BETWEEN THE TREASURY DEPARTMENT AND DEFENSE DEPARTMENT CONCERNING MAINTENANCE OF THE CUSTOM'S AGENCIES DRUG INTERDICTION AIRCRAFT?

25. ARE YOU FAMILIAR WITH THE TREASURY BUDGET REQUEST THAT WILL ELIMINATE 1,000 POSITIONS IN THE PATROL AND INSPECTION DIVISIONS CAUSING A REDUCTION IN FORCE OF 500 PEOPLE AND REDUCE BY 45% THE AIR OPERATIONS AND INTERDICTION PROGRAM THAT YOU, ONLY YESTERDAY, INDICATED HAD BEEN AN IMPORTANT ELEMENT IN THE DRUG ENFORCEMENT PROGRAM?

26. ARE YOU AWARE THAT CUSTOMS IS EXPERIENCING AN AVERAGE workload increase of 7-9% per yr?

27. -HAS THIS ISSUE BEEN DISCUSSED BY THE LEGAL POLICY COMMITTEE OR ANY OTHER COORDINATING GROUP THAT IS SUPPOSED TO BE DEVELOPING AND IMPLEMENTING A COORDINATED DRUG ENFORCMENT POLICY?

28. -DO YOU SUPPORT A CUT LIKE THIS TO A MAJOR ARM OF THE DRUG ENFORCMENT PROGRAM?

29. -WHO, UNDER THE ADMINISTRATION'S CURRENT COORDINATING STRUCTURE, WILL RESOLVE THIS PROBLEM?

30. -HAS THE LEGAL POLICY COMMITTEE EVER CONSIDERED FORMULATING ONE BUDGET DOCUMENT WITH BUDGET PRIORITIES THAT CLEARLY DEFINES WHAT EACH OF THE VARIOUS AGENCIES AND DEPARTMENTS WILL COMMIT TO THE DRUG PROGRAM?

31. -IF THERE WAS A CENTRAL DRUG POLICY THAT INCLUDED A STRATEGY AND BUDGET WITH ONE INDIVIDUAL CLEARLY REPONSIBLE FOR CARRYING OUT THAT STRATEGY, DO YOU BELIEVE WE WOULD BE READING ARTICLES LIKE THE WASHINGTON TIMES STORY ON FEBRUARY 29, 1984, ENTITLED, "REAGAN FACES FLACK, LACKS PENTAGON AIR SUPPORT."?

QUESTION SUBMITTED BY SENATOR BIDEN

MR. MEESE should be asked whether he, during the period he has served in the White House, has had any contacts, direct or indirect, would anyone in the Department of Justice on the subject of ongoing investigations or prosecutions, and if so the nature of those contacts?

ANSWERS TO SENATOR BIDEN'S QUESTIONS RE: DRUG ENFORCEMENT COORDINATION

a.) Yes

1. Coordination of the overall drug enforcement effort is important. I feel that, in general, board members themselves should attend and would do my best to ensure that the Cabinet level members of the board are personally present at meetings.

2. I cannot agree that U.S. diplomatic efforts to control drugs "consistently take a back seat to other foreign policy concerns." Both the Attorney General and the Assistant Secretary of State for International Narcotic Affairs," backed by the President and the Secretary of State, have taken more aggressive steps in dealing with other countries on this problem than ever before. It must be recognized, however, that there are times when other major U.S. interests, such as national security, are at stake and there will be a balance determined by the competing objectives. I believe we should continue a strong and aggressive policy toward drug control in foreign countries.

3. Yes, I would be willing to advise the President to terminate all U.S. aid to a drug source if I felt that course of action would be appropriate. Likewise, I would not hesitate to recommend working through multi-national financial organizations, if in the light of all the facts, they appeared to be an appropriate means of assuring drug control cooperation.

4. As stated above, the U.S. has initiated and is improving its efforts to stop illicit drugs from foreign sources. I believe there is room for more diplomatic efforts and a need to continue to make this subject a priority item of discussion when the President and other high officials meet with the leaders of the countries involved.

5. I would propose that the State Department make drug control a major subject of concern in training ambassadors and in regular communications with the countries involved. I would propose that the Treasury Department examine ways in which it could influence better control of drugs at foreign sources through cooperative customs agreements and through incentives employed in our financial relationships.

6. I do not have sufficient information at the present time to make a judgment as to whether the governments of the countries listed are making a good faith effort to cooperate with the U.S. in drug control, but I would make this subject a matter of immediate concern if confirmed at Attorney General.

7. I would generally support eradication of poppy and marijuana crops by aerial spraying of herbicides in the countries listed. However, to make a definitive judgment, I would need more information on each of the countries to be sure that such action would be both appropriate and effective. Where aerial spraying is to be undertaken, the U.S. assisted by provided equipment, technical assistance and training for the foreign governments.

8. I believe that we should encourage the international banking community to include drug considerations in their lending and operating protocols. It would be a mistake to attempt to dictate such terms because we are likely to make better progress through friendly agreements.

9. The Intelligence Community has increased its contribution to the drug control effort. However, I look forward to receiving more extensive briefings on current

efforts and would continually encourage greater intelligence activity as available resources permit.

10. The agencies and departments which use the intelligence produced by the Intelligence Community also contribute to the establishment of the intelligence collection requirements. The Intelligence Community, including the Central Intelligence Agency, can provide intelligence support consistent with existing statutory restrictions. I look forward to receiving further information that will enable me to suggest additional support that the CIA and other intelligence agencies might provide.

11. I have not had an opportunity to analyze the requirements and resources that form the basis for the budget of the State Department's Bureau of International Narcotic Matters. I would endeavor to obtain such information as quickly as possible so that I could make my suggestions to the appropriate officials for future budget requests.

12. I agree with the strategy that calls for the encouragement of foreign governments to recognize that their own populations also can be victims of drug abuse. I think we should increase our effort to urge other countries to add drug control to their foreign policy agendas. I think we should do everything possible to assist and cooperate with other countries in their drug control efforts, particularly in providing them information about successful prevention and drug control programs that have worked in the U.S.

13. Following Congressional approval of the exception to the Posse Comitatus Act, which now allows the military services to provide support to civilian drug law enforcement, the Department of Defense has been cooperating by providing equipment, sharing information, and deploying ships and planes to assist in drug interdiction efforts. I believe that the Defense Department can play an increasing role in drug interdiction consistent with military requirements of readiness and training.

14. I handled this announcement and briefing because I had helped to develop the National Narcotic Board Interdiction System and was the most knowledgeable White House staffer on this subject. The briefing of the press was a staff function and full recognition was given to the leadership role of the Vice President.

15. The border interdiction system is to promote cooperation and coordination among existing agencies. While I expect increases in the overall resources dedicated to this effort, further experience will be needed to determine whether still additional resources may be required in the future.

16. The military services have been cooperating with the border interdiction effort and the Vice President has established the system for coordination. The goal was and is to reduce the flow of illicit drugs coming into the United States. The Customs Service, the Coast Guard, and the armed forces are all supporting the interdiction effort and we will vigorously pursue this effort in both air and sea interdiction.

17. The goal of the National Narcotics Border Interdiction System was and is to increase the effectiveness of the U.S. efforts to intercept drugs being smuggled, by land, sea, or air, into the United States.

18. I have not seen the detailed analysis of the changes in the Customs air program but you may be assured that the President, the Vice President and the Executive Board of the National Narcotics Border Interdiction System, of which I am a member, will not allow the effectiveness of the overall air interdiction program to deteriorate.

19. Yes. The commitment of this Administration and the resources devoted to the "drug fight" exceed any previous effort by the Federal government. Further, for the first time in recent history, surveys are beginning to show a decline in overall drug use.

20. I am not aware of a formal evaluation of the South Florida Task Force Program.

21. I am not personally familiar with the report requirement, but we will strive to provide timely reports, as required.

22. I believe the bottom line is really the absence of people abusing drugs. The law enforcement efforts support this goal many ways; reducing the availability of illicit drugs by stopping the drugs and removing the trafficking organizations, by making it too hot or risky to be involved in drug smuggling or trafficking, by raising the cost of doing business to the trafficker and raising the price of doing drugs to the user. However, seizures, price, and availability do not tell the whole story. Drug users tend to substitute other drugs of abuse if one drug is in short supply. To improve the future of our country, we must also seek a change in public attitudes and make drug abuse unacceptable personal behavior.

23. I am a member of the Cabinet Council on Legal Policy that has responsibility for issues relating to the Federal drug effort.

24. I am familiar that an issue exists concerning maintenance of the Customs Service drug interdiction aircraft which is currently a subject of discussion between the Treasury and Defense Departments.

25. I am aware of the general budget for the customs service. I have been advised that the proposed reduction in personnel can be accommodated by efficiencies in administrative and operational procedures and will not adversely affect the level of customs drug law enforcement. I am also advised that the air operations and interdiction effort will likewise not suffer any impairment.

26. No.

27. To the best of my knowledge, this issue has not been discussed by any policy committee for any other group responsible for coordinating drug enforcement policy.

28. I have been informed that the current budget will not result in a cut in law enforcement resources devoted to the overall drug enforcement program. If I should find that such a result has occurred, I will make appropriate recommendations to the President and other appropriate officials to restore and maintain the necessary level of effort.

29. This would probably be resolved within the framework of the Cabinet Council on Legal Policy and, if not agreed at a lower level by the President.

30. During this Administration there has been no consideration of a single budget document which would include all of the resources committed to the drug program. I would be willing to explore the possibility of such a document as an adjunct to the current budgeting system.

31. The one individual responsible for overall strategy and formulation of one budget document for the many agencies and departments with drug abuse responsibilities is the President. We also have a system to distribute the varied responsibilities and resources among the Cabinet Departments and agencies. To approach this whole area of international narcotics control, drug law enforcement, and health-related drug abuse programs with the idea that one individual other than the President could have line authority over the entire set of activities is imaginative, but impractical. It would be more likely to generate such newspaper articles as the one quoted, rather than eliminate them.

RESPONSES OF EDWIN MEESE III TO QUESTIONS SUBMITTED BY SENATOR JOSEPH BIDEN

You have asked whether I have had any contacts with the Department of Justice concerning ongoing investigations or prosecutions.

I have been interviewed by agents of the Federal Bureau of Investigation concerning background and other investigations, I have referred allegations received by my office to the Department of Justice for appropriate handling, and I have been present when the Attorney General has briefed the President on sensitive investigations. I wish to stress, however, that at no time have I contacted representatives of the Department of Justice, either directly or indirectly, for the purpose of influencing any ongoing investigation or prosecution.

The CHAIRMAN. Since this is the close of the hearings, I want to say this. We have had our investigators investigate all of these so-called charges about Mr. Meese. Our investigators ascertained no merit in these charges. The hearing has revealed no merit in these charges.

It is my judgment that Mr. Meese will make a good, honest, diligent, active Attorney General and will serve all the people of this Nation.

We expect to have a meeting on Thursday to vote on this matter. Until then, this committee stands adjourned——

Senator BIDEN. I expect that is when you expect me to lean over backwards.

The CHAIRMAN [continuing]. Unless Senator Biden has something else he wants to bring up.

Senator BIDEN. No; I do not, Mr. Chairman.

The CHAIRMAN. We now stand adjourned until Thursday at 10 o'clock, at which time the committee will meet in executive session on this and other matters. We stand adjourned.

[Whereupon, at 6:50 p.m., the committee was adjourned.]

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